

[DISCUSSION DRAFT]

111TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To [to be supplied].

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IN THE HOUSE OF REPRESENTATIVES

M \_\_. \_\_\_\_\_ introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

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**A BILL**

To [to be supplied].

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Over-the-Counter De-  
5 rivatives Markets Act of 2009”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Review of regulatory authority.
- Sec. 4. International harmonization.

TITLE I—REGULATION OF SWAP MARKETS

Sec. 101. Definitions.

- Sec. 102. Jurisdiction.
- Sec. 103. Clearing and execution transparency.
- Sec. 104. Public reporting of aggregate swap data.
- Sec. 105. Swap repositories.
- Sec. 106. Reporting and recordkeeping.
- Sec. 107. Registration and regulation of swap dealers and major swap participants.
- Sec. 108. Conflicts of interest.
- Sec. 109. Alternative swap execution facilities.
- Sec. 110. Derivatives transaction execution facilities and exempt boards of trade.
- Sec. 111. Designated contract markets.
- Sec. 112. Margin.
- Sec. 113. Position limits.
- Sec. 114. Enhanced authority over registered entities.
- Sec. 115. Foreign boards of trade.
- Sec. 116. Legal certainty for swaps.
- Sec. 117. FDICIA amendments.
- Sec. 118. Enforcement authority.
- Sec. 119. Enforcement.
- Sec. 120. Retail commodity transactions.
- Sec. 121. Large swap trader reporting.
- Sec. 122. Other authority.
- Sec. 123. Antitrust.
- Sec. 124. Review of prior actions.
- Sec. 125. Expedited process.
- Sec. 126. Effective date.

## TITLE II—REGULATION OF SECURITY-BASED SWAP MARKETS

- Sec. 201. Definitions under the Securities Exchange Act of 1934.
- Sec. 202. Repeal of prohibition on regulation of security-based swaps.
- Sec. 203. Amendments to the Securities Exchange Act of 1934.
- Sec. 204. Reporting and recordkeeping.
- Sec. 205. State gaming and bucket shop laws.
- Sec. 206. Amendments to the Securities Act of 1933; treatment of security-based swaps.
- Sec. 207. Other authority.
- Sec. 208. Jurisdiction.
- Sec. 209. Effective date.

## TITLE III—IMPROVED FINANCIAL AND COMMODITY MARKETS OVERSIGHT AND ACCOUNTABILITY

- Sec. 301. Elevation of certain Inspectors General to appointment pursuant to section 3 of the Inspector General Act of 1978.
- Sec. 302. Continuation of provisions relating to personnel.
- Sec. 303. Subpoena authority of certain Inspectors General.
- Sec. 304. Corrective responses by heads of certain establishments to deficiencies identified by Inspectors General.
- Sec. 305. Effective date; transition rule.

# 1 SEC. 3. REVIEW OF REGULATORY AUTHORITY.

## 2 (a) CONSULTATION.—

1           (1) CFTC.—Before commencing any rule-  
2           making or issuing an order regarding swaps, swap  
3           dealers, major swap participants, swap repositories,  
4           persons associated with a swap dealer or major swap  
5           participant, eligible contract participants, or alter-  
6           native swap execution facilities pursuant to title I,  
7           the Commodity Futures Trading Commission shall  
8           consult with the Securities and Exchange Commis-  
9           sion and the Prudential Regulators .

10          (2) SEC.—Before commencing any rulemaking  
11          or issuing an order regarding security-based swaps,  
12          security-based swap dealers, major security-based  
13          swap participants, security-based swap repositories,  
14          persons associated with a security-based swap dealer  
15          or major security-based swap participant, eligible  
16          contract participant, or alternative swap execution  
17          facilities pursuant to title II, the Securities and Ex-  
18          change Commission shall consult with the Com-  
19          modity Futures Trading Commission and the Pru-  
20          dential Regulators.

21          (3) In developing and promulgating rules pur-  
22          suant to this subsection, the Commodity Futures  
23          Trading Commission and the Securities and Ex-  
24          change Commission shall consider each other's views  
25          and the views of the Prudential Regulators.

1           (4) In adopting a rule described in paragraph  
2           (1) or (2), the Commodity Futures Trading Com-  
3           mission and the Securities and Exchange Commis-  
4           sion shall prescribe requirements to treat function-  
5           ally or economically similar products or entities simi-  
6           larly.

7           (5) Paragraph (4) shall not be construed to re-  
8           quire the Commodity Futures Trading Commission  
9           and the Securities Exchange Commission to adopt a  
10          rule that treats functionally or economically similar  
11          products identically.

12          (b) LIMITATION.—

13           (1) CFTC.—Nothing in this Act shall be con-  
14          strued to confer jurisdiction on the Commodity Fu-  
15          tures Trading Commission to issue a rule, regula-  
16          tion, or order providing for oversight or regulation  
17          of—

18                   (A) security-based swaps; or

19                   (B) with regard to their activities or func-  
20          tions concerning security-based swaps—

21                           (i) security-based swap dealers;

22                           (ii) major security-based swap partici-  
23          pants;

24                           (iii) security-based swap repositories;

1 (iv) persons associated with a secu-  
2 rity-based swap dealer or major security-  
3 based swap participant;

4 (v) eligible contract participants with  
5 respect to security-based swaps; or

6 (vi) alternative swap execution facili-  
7 ties.

8 (2) SEC.—Nothing in this Act shall be con-  
9 strued to confer jurisdiction on the Securities and  
10 Exchange Commission to issue a rule, regulation, or  
11 order providing for oversight or regulation of—

12 (A) swaps; or

13 (B) with regard to their activities or func-  
14 tions concerning swaps—

15 (i) swap dealers;

16 (ii) major swap participants;

17 (iii) swap repositories;

18 (iv) persons associated with a swap  
19 dealer or major swap participant;

20 (v) eligible contract participants with  
21 respect to swaps; or

22 (vi) alternative swap execution facili-  
23 ties.

24 (c) OBJECTION TO COMMISSION REGULATION.—

1           (1) FILING OF PETITION FOR REVIEW.—If ei-  
2           ther Commission referred to in this section believes  
3           that a final rule, regulation, or order of the other  
4           such Commission conflicts with subsection (a)(4) or  
5           (b), then the complaining Commission may obtain  
6           review thereof in the United States Court of Appeals  
7           for the District of Columbia Circuit by filing in the  
8           court, not later than 60 days after the date of publi-  
9           cation of the final rule, regulation, or order, a writ-  
10          ten petition requesting that the rule, regulation, or  
11          order be set aside. Any such proceeding shall be ex-  
12          pedited by the Court of Appeals.

13          (2) TRANSMITTAL OF PETITION AND  
14          RECORD.—A copy of a petition described in para-  
15          graph (1) shall be transmitted not later than 1 busi-  
16          ness day after filing by the complaining Commission  
17          to the Secretary of the responding Commission. On  
18          receipt of the petition, the responding Commission  
19          shall file with the court a copy of the rule, regula-  
20          tion, or order under review and any documents re-  
21          ferred to therein, and any other materials prescribed  
22          by the court.

23          (3) STANDARD OF REVIEW.—The court, giving  
24          deference to the views of neither Commission, shall  
25          determine to affirm or set aside a rule, regulation,

1 or order of the responding Commission under this  
2 subsection, based on the determination of the court,  
3 as to whether the rule, regulation, or order is in con-  
4 flict with subsection (a)(4) or (b), as applicable.

5 (4) JUDICIAL STAY.—The filing of a petition by  
6 the complaining Commission pursuant to paragraph  
7 (1) shall operate as a stay of the rule, regulation, or  
8 order, until the date on which the determination of  
9 the court is final (including any appeal of the deter-  
10 mination).

11 (d) DEFINITIONS.—In this section, the terms “Pru-  
12 dential Regulators”, “swap”, “swap dealer”, “major swap  
13 participant”, “swap repository”, “person associated with  
14 a swap dealer or major swap participant”, “eligible con-  
15 tract participant”, “alternative swap execution facility”,  
16 “security-based swap”, “security-based swap dealer”,  
17 “major security-based swap participant”, “security-based  
18 swap repository”, and “person associated with a security-  
19 based swap dealer or major security-based swap partici-  
20 pant” shall have the meanings provided, respectively, in  
21 the Commodity Exchange Act, including any modification  
22 of the meanings under section 101(b) of this Act.

23 **SEC. 4. INTERNATIONAL HARMONIZATION.**

24 In order to promote effective and consistent global  
25 regulation of swaps and security-based swaps, the Com-

1   modity Futures Trading Commission, the Securities and  
2   Exchange Commission, the Prudential Regulators (as de-  
3   fined in section 1a(43) of the Commodity Exchange Act),  
4   [and the financial stability regulator] shall consult and co-  
5   ordinate with foreign regulatory authorities on the estab-  
6   lishment of consistent international standards with respect  
7   to the regulation of swaps and security-based swaps, and  
8   may agree to such information-sharing arrangements as  
9   may be deemed to be necessary or appropriate in the pub-  
10   lic interest or for the protection of investors, swap counter-  
11   parties, and security-based swap counterparties.

## 12   **TITLE I—REGULATION OF SWAP** 13                                   **MARKETS**

### 14   **SEC. 101. DEFINITIONS.**

15           (a) AMENDMENTS TO DEFINITIONS IN THE COM-  
16   MODITY EXCHANGE ACT.—Section 1a of the Commodity  
17   Exchange Act (7 U.S.C. 1a) is amended—

18                   (1) by redesignating paragraphs (9) through  
19                   (34) as paragraphs (10) through (35), respectively;

20                   (2) by redesignating paragraph (35) (as redes-  
21                   ignated by paragraph (1) of this subsection) as  
22                   paragraph (36);

23                   (3) by inserting after paragraph (34) (as redes-  
24                   ignated by paragraph (1) of this subsection) the fol-  
25                   lowing:



1 “(35) SWAP.—

2 “(A) IN GENERAL.—Except as provided in  
3 subparagraph (B), the term ‘swap’ means any  
4 agreement, contract, or transaction that—

5 “(i) is a put, call, cap, floor, collar, or  
6 similar option of any kind for the purchase  
7 or sale of, or based on the value of, 1 or  
8 more interest or other rates, currencies,  
9 commodities, securities, instruments of in-  
10 debtedness, indices, quantitative measures,  
11 or other financial or economic interests or  
12 property of any kind;

13 “(ii) provides for any purchase, sale,  
14 payment, or delivery (other than a dividend  
15 on an equity security) that is dependent on  
16 the occurrence, non-occurrence, or the ex-  
17 tent of the occurrence of an event or con-  
18 tingency associated with a potential finan-  
19 cial, economic, or commercial consequence;

20 “(iii) provides on an executory basis  
21 for the exchange, on a fixed or contingent  
22 basis, of 1 or more payments based on the  
23 value or level of 1 or more interest or other  
24 rates, currencies, commodities, securities,  
25 instruments of indebtedness, indices, quan-

1 titative measures, or other financial or eco-  
2 nomic interests or property of any kind, or  
3 any interest therein or based on the value  
4 thereof, and that transfers, as between the  
5 parties to the transaction, in whole or in  
6 part, the financial risk associated with a  
7 future change in any such value or level  
8 without also conveying a current or future  
9 direct or indirect ownership interest in an  
10 asset (including any enterprise or invest-  
11 ment pool) or liability that incorporates the  
12 financial risk so transferred, and includes  
13 any agreement, contract, or transaction  
14 commonly known as an interest rate swap,  
15 a rate floor, rate cap, rate collar, cross-cur-  
16 rency rate swap, basis swap, currency  
17 swap, foreign exchange swap, total return  
18 swap, equity index swap, equity swap, debt  
19 index swap, debt swap, credit spread, cred-  
20 it default swap, credit swap, weather swap,  
21 energy swap, metal swap, agricultural  
22 swap, emissions swap, or commodity swap;  
23 “(iv) is, or in the future becomes,  
24 commonly known to the trade as a swap;  
25 or

1 “(v) is any combination or permuta-  
2 tion of, or option on, any agreement, con-  
3 tract, or transaction described in any of  
4 clauses (i) through (iv);

5 “(B) EXCLUSIONS.—The term ‘swap’ does  
6 not include—

7 “(i) any contract of sale of a com-  
8 modity for future delivery or security fu-  
9 tures product traded on or subject to the  
10 rules of any board of trade designated as  
11 a contract market under section 5 or 5f;

12 “(ii) any sale of a nonfinancial com-  
13 modity or security for deferred shipment or  
14 delivery, so long as the transaction is phys-  
15 ically settled;

16 “(iii) any put, call, straddle, option, or  
17 privilege on any security, certificate of de-  
18 posit, or group or index of securities, in-  
19 cluding any interest therein or based on  
20 the value thereof, that is subject to the Se-  
21 curities Act of 1933 (15 U.S.C. 77a et  
22 seq.) and the Securities Exchange Act of  
23 1934 (15 U.S.C. 78a et seq.);

24 “(iv) any put, call, straddle, option, or  
25 privilege relating to foreign currency en-

1           tered into on a national securities exchange  
2           registered pursuant to section 6(a) of the  
3           Securities Exchange Act of 1934 (15  
4           U.S.C. 78f(a));

5           “(v) any agreement, contract, or  
6           transaction providing for the purchase or  
7           sale of 1 or more securities on a fixed basis  
8           that is subject to the Securities Act of  
9           1933 (15 U.S.C. 77a et seq.) and the Se-  
10          curities Exchange Act of 1934 (15 U.S.C.  
11          78a et seq);

12          “(vi) any agreement, contract, or  
13          transaction providing for the purchase or  
14          sale of 1 or more securities on a contingent  
15          basis that is subject to the Securities Act  
16          of 1933 (15 U.S.C. 77a et seq) and the  
17          Securities Exchange Act of 1934 (15  
18          U.S.C. 78a et seq.), unless the agreement,  
19          contract, or transaction predicates the pur-  
20          chase or sale on the occurrence of a bona  
21          fide contingency that might reasonably be  
22          expected to affect or be affected by the  
23          creditworthiness of a party other than a  
24          party to the agreement, contract, or trans-  
25          action;

1 “(vii) any note, bond, or evidence of  
2 indebtedness that is a security as defined  
3 in section 2(a)(1) of the Securities Act of  
4 1933 (15 U.S.C. 77b(a)(1));

5 “(viii) any agreement, contract, or  
6 transaction that is—

7 “(I) based on a security; and

8 “(II) entered into directly or  
9 through an underwriter (as defined in  
10 section 2(a)(11) of the Securities Act  
11 of 1933) (15 U.S.C. 77b(a)(11)) by  
12 the issuer of the security for the pur-  
13 poses of raising capital, unless the  
14 agreement, contract, or transaction is  
15 entered into to manage a risk associ-  
16 ated with capital raising;

17 “(ix) a foreign exchange forward that  
18 meets the requirements of subclause (I),  
19 but only to the extent described in sub-  
20 clause (II)—

21 “(I) a foreign exchange for-  
22 ward—

23 “(aa) in which all parties to  
24 the agreement are eligible con-  
25 tract participants;

1 “(bb) that results in actual  
2 delivery of currency; and

3 “(cc) that is not structured  
4 to evade the [Over-the-Counter  
5 Derivatives Markets Act of 2009]  
6 in violation of any rules promul-  
7 gated by the Commission pursu-  
8 ant that Act;

9 “(II) shall not be considered a  
10 “swap” except that—

11 “(aa) all parties to the  
12 agreement (unless the agreement  
13 was cleared) shall report such an  
14 agreement either to a swap re-  
15 pository described in section 21  
16 or, if there is no repository that  
17 would accept the agreement, to  
18 the Commission pursuant to sec-  
19 tion 4r within such time period  
20 as the Commission may by rule  
21 or regulation prescribe; and

22 “(bb) any party to the  
23 agreement that is a swap dealer  
24 or a major swap participant shall  
25 conform to the business conduct

1 standards contained in section  
2 4s(h);

3 “(x) any agreement, contract, or  
4 transaction a counterparty of which is a  
5 Federal Reserve bank, the United States  
6 government or an agency of the United  
7 States government that is expressly backed  
8 by the full faith and credit of the United  
9 States; and

10 “(xi) security-based swaps.

11 “(C) RULE OF CONSTRUCTION REGARDING  
12 MASTER AGREEMENTS.—The term ‘swap’ shall  
13 be construed to include a master agreement  
14 that provides for an agreement, contract, or  
15 transaction that is a swap pursuant to subpara-  
16 graph (A), together with all supplements to any  
17 such master agreement, without regard to  
18 whether the master agreement contains an  
19 agreement, contract, or transaction that is not  
20 a swap pursuant to subparagraph (A), except  
21 that the master agreement shall be considered  
22 to be a swap only with respect to each agree-  
23 ment, contract, or transaction under the master  
24 agreement that is a swap pursuant to subpara-  
25 graph (A).”;

1 (4) in subparagraph (A) of paragraph (13) (as  
2 redesignated by paragraph (1) of this subsection)—

3 (A) in clause (vii), by striking  
4 “\$25,000,000” and inserting “\$50,000,000”;  
5 and

6 (B) in clause (xi), by striking “total assets  
7 in an amount” and inserting “amounts invested  
8 on a discretionary basis”;

9 (5) in paragraph (30) (as redesignated by para-  
10 graph (1) of this subsection), by—

11 (A) redesignating subparagraph (E) as  
12 subparagraph (G);

13 (B) in subparagraph (D), by striking  
14 “and”; and

15 (C) inserting after subparagraph (D) the  
16 following:

17 “(E) an alternative swap execution facility  
18 registered under section 5h;

19 “(F) a swap repository; and”;

20 (6) by inserting after paragraph (36) (as red-  
21 igned by subsection (c)) the following:

22 “(37) BOARD.—The term ‘Board’ means the  
23 Board of Governors of the Federal Reserve Sys-  
24 tem.”;



1 (7) by inserting after paragraph (37) the fol-  
2 lowing:

3 “(38) SECURITY-BASED SWAP.—The term ‘se-  
4 curity-based swap’ has the same meaning as in sec-  
5 tion 3(a)(68) of the Securities and Exchange Act of  
6 1934.”;

7 (8) by inserting after paragraph (38) the fol-  
8 lowing:

9 “(39) SWAP DEALER.—The term ‘swap dealer’  
10 means any person who, as a significant part of its  
11 business—

12 “(A) holds itself out as a dealer in swaps;

13 “(B) makes a market in swaps;

14 “(C) regularly engages in the purchase of  
15 swaps and their resale to customers in the ordi-  
16 nary course of a business; or

17 “(D) engages in any activity causing the  
18 person to be commonly known in the trade as  
19 a dealer or market maker in swaps.”;

20 (9) by inserting after paragraph (39) the fol-  
21 lowing:

22 “(40) MAJOR SWAP PARTICIPANT.—

23 “(A) IN GENERAL.—The term ‘major swap  
24 participant’ means any person who is not a

1 swap dealer and who maintains a substantial  
2 net position in outstanding uncleared swaps.

3 “(B) DEFINITION OF SUBSTANTIAL NET  
4 POSTION.—The Commission shall define by rule  
5 or regulation the term ‘substantial net position’  
6 at a threshold that the Commission determine  
7 prudent for the effective monitoring, manage-  
8 ment and oversight of entities which are sys-  
9 temically important or can significantly impact  
10 the financial system.”;

11 (10) by inserting after paragraph (40) the fol-  
12 lowing:

13 “(41) MAJOR SECURITY-BASED SWAP PARTICI-  
14 PANT.—The term ‘major security-based swap partic-  
15 ipant’ has the same meaning as in section 3(a)(67)  
16 of the Securities Exchange Act of 1934.”;

17 (11) by inserting after paragraph (41) the fol-  
18 lowing:

19 “(42) APPROPRIATE FEDERAL BANKING AGEN-  
20 CY.—The term ‘appropriate Federal banking agency’  
21 has the same meaning as in section 3(q) of the Fed-  
22 eral Deposit Insurance Act (12 U.S.C. 1813(q)).”;

23 (12) by inserting after paragraph (42) the fol-  
24 lowing:

1           “(43) PRUDENTIAL REGULATOR.—The term  
2           ‘Prudential Regulator’ means—

3                   “(A) the Board in the case of a swap deal-  
4                   er, major swap participant, security-based swap  
5                   dealer or major security-based swap participant  
6                   that is—

7                           “(i) a State-chartered bank that is a  
8                           member of the Federal Reserve System; or

9                           “(ii) a State-chartered branch or  
10                          agency of a foreign bank;

11                       “(B) the Office of the Comptroller of the  
12                       Currency in the case of a swap dealer, major  
13                       swap participant, security-based swap dealer or  
14                       major security-based swap participant that is—

15                           “(i) a national bank; or

16                           “(ii) a federally chartered branch or  
17                          agency of a foreign bank; and

18                       “(C) the Federal Deposit Insurance Cor-  
19                       poration in the case of a swap dealer, major  
20                       swap participant, security-based swap dealer or  
21                       major security-based swap participant that is a  
22                       state-chartered bank that is not a member of  
23                       the Federal Reserve System.”;

24           (13) by inserting after paragraph (43) the fol-  
25           lowing:

1           “(44) SECURITY-BASED SWAP DEALER.—The  
2           term ‘security-based swap dealer’ has the same  
3           meaning as section 3(a)(71) of the Securities Ex-  
4           change Act of 1934.”;

5           (14) by inserting after paragraph (44) the fol-  
6           lowing:

7           “(45) FOREIGN EXCHANGE FORWARD.—The  
8           term ‘foreign exchange forward’ means a transaction  
9           that solely involves the exchange of 2 different cur-  
10          rencies on a specific future date at a fixed rate  
11          agreed at the inception of the contract.”;

12          (15) by inserting after paragraph (45) the fol-  
13          lowing:

14          “(46) FOREIGN EXCHANGE SWAP.—The term  
15          ‘foreign exchange swap’ means a transaction that  
16          solely involves the exchange of 2 different currencies  
17          on a specific date at a fixed rate agreed at the incep-  
18          tion of the contract, and a reverse exchange of the  
19          same 2 currencies at a date further in the future  
20          and at a fixed rate agreed at the inception of the  
21          contract.”;

22          (16) by inserting after paragraph (46) the fol-  
23          lowing:

24          “(47) PERSON ASSOCIATED WITH A SECURITY-  
25          BASED SWAP DEALER OR MAJOR SECURITY-BASED

1 SWAP PARTICIPANT.—The term ‘person associated  
2 with a security-based swap dealer or major security-  
3 based swap participant’ or ‘associated person of a  
4 security-based swap dealer or major security-based  
5 swap participant’ has the same meaning as in sec-  
6 tion 3(a)(70) of the Securities Exchange Act of  
7 1934.”;

8 (17) by inserting after paragraph (47) the fol-  
9 lowing:

10 “(48) PERSON ASSOCIATED WITH A SWAP  
11 DEALER OR MAJOR SWAP PARTICIPANT.—The term  
12 ‘person associated with a swap dealer or major swap  
13 participant’ or ‘associated person of a swap dealer or  
14 major swap participant’ means any partner, officer,  
15 director, or branch manager of a swap dealer or  
16 major swap participant (or any person occupying a  
17 similar status or performing similar functions), any  
18 person directly or indirectly controlling, controlled  
19 by, or under common control with a swap dealer or  
20 major swap participant, or any employee of a swap  
21 dealer or major swap participant, except that any  
22 person associated with a swap dealer or major swap  
23 participant whose functions are solely clerical or  
24 ministerial shall not be included in the meaning of

1 the term other than for purposes of section  
2 4s(b)(6).”; and

3 (18) by inserting after paragraph (48) the fol-  
4 lowing:

5 “(49) SWAP REPOSITORY.—The term ‘swap re-  
6 pository’ means an entity that collects and maintains  
7 the records of the terms and conditions of swaps or  
8 security-based swaps entered into by third parties.”.

9 (b) AUTHORITY TO FURTHER DEFINE TERMS.—The  
10 Commodity Futures Trading Commission shall adopt a  
11 rule further defining the terms “swap”, “swap dealer”,  
12 “major swap participant”, and “eligible contract partici-  
13 pant” for the purpose of including transactions and enti-  
14 ties that have been structured to evade this Act.

15 (c) EXEMPTIONS.—Section 4(c) of the Commodity  
16 Exchange Act (7 U.S.C. 4(c)) is amended by adding at  
17 the end the following: “The Commission shall not have  
18 the authority to grant exemptions from the swap-related  
19 provisions of the Over-the-Counter Derivatives Markets  
20 Act of 2009, except as expressly authorized under the pro-  
21 visions of that Act.”.

22 **SEC. 102. JURISDICTION.**

23 (a) EXCLUSIVE JURISDICTION.—The first sentence  
24 of section 2(a)(1)(A) of the Commodity Exchange Act (7  
25 U.S.C. 2(a)(1)(A)) is amended—

1 (1) by striking “(c) through (i)” and inserting  
2 “(c) and (f)”; and

3 (2) by inserting “swaps, or” before “contracts  
4 of sale”.

5 (b) ADDITIONS.—Section 2(c)(2)(A) of such Act (7  
6 U.S.C. 2(c)(2)(A)) is amended—

7 (1) in clause (i) by striking “or” at the end;

8 (2) by redesignating clause (ii) as clause (iii);

9 and

10 (3) by inserting after clause (i) the following:

11 “(ii) a swap; or”.

12 **SEC. 103. CLEARING AND EXECUTION TRANSPARENCY.**

13 (a) CLEARING AND EXECUTION TRANSPARENCY RE-  
14 QUIREMENTS.—

15 (1) Section 2 of the Commodity Exchange Act  
16 (7 U.S.C. 2) is amended by striking subsections (d),  
17 (e), (g), and (h).

18 (2) Section 2 of such Act (7 U.S.C. 2) is fur-  
19 ther amended by inserting after subsection (c) the  
20 following:

21 “(d) SWAPS.—Nothing in this Act (other than sub-  
22 sections (a)(1)(A), (a)(1)(B), (f), (j), and (k), sections 4a,  
23 4b, 4b-1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 5, 5b, 5c, 5h, 6(c),  
24 6(d), 6e, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a), 13(b), 21,  
25 and 22(a)(4) and such other provisions of this Act as are

1 applicable by their terms to registered entities and Com-  
2 mission registrants) governs or applies to a swap.

3 “(e) LIMITATION ON PARTICIPATION.—It shall be  
4 unlawful for any person, other than an eligible contract  
5 participant, to enter into a swap unless the swap is en-  
6 tered into on or subject to the rules of a board of trade  
7 designated as a contract market under section 5.”.

8 (3) Section 2 of such Act (7 U.S.C. 2) is fur-  
9 ther amended by inserting after subsection (i) the  
10 following:

11 “(j) CLEARING REQUIREMENT.—

12 “(1) IN GENERAL.—

13 “(A) PRESUMPTION OF CLEARING.—A  
14 swap shall be submitted for clearing if a deriva-  
15 tives clearing organization that is registered  
16 under this Act will accept the swap for clearing.

17 “(B) OPEN ACCESS.—The rules of a de-  
18 rivatives clearing organization described in sub-  
19 paragraph (A) shall—

20 “(i) prescribe that all swaps submitted  
21 to the derivatives clearing organization  
22 with the same terms and conditions are  
23 fungible within the derivatives clearing or-  
24 ganization and may be offset with each  
25 other; and



1                   “(ii) provide for non-discriminatory  
2                   clearing of a swap executed bilaterally or  
3                   on or through the rules of an unaffiliated  
4                   designated contract market or alternative  
5                   swap execution facility.

6                   “(2) COMMISSION APPROVAL.—

7                   “(A) IN GENERAL.—A derivatives clearing  
8                   organization shall submit to the Commission for  
9                   prior approval each swap, or any group, cat-  
10                  egory, type or class of swaps, that it seeks to  
11                  accept for clearing, which submission the Com-  
12                  mission shall make available to the public.

13                  “(B) DEADLINE.—The Commission shall  
14                  take final action on a request submitted pursu-  
15                  ant to subparagraph (A) not later than 90 days  
16                  after submission of the request, unless the de-  
17                  rivatives clearing organization submitting the  
18                  request agrees to an extension of the time limi-  
19                  tation established under this subparagraph. A  
20                  request on which the Commission fails to take  
21                  final action within the time limitation estab-  
22                  lished under this subparagraph is deemed ap-  
23                  proved.

24                  “(C) APPROVAL.—The Commission shall  
25                  approve, unconditionally or subject to such

1 terms and conditions as the Commission deter-  
2 mines to be appropriate, any request submitted  
3 pursuant to subparagraph (A) if the Commis-  
4 sion finds that the request is consistent with  
5 section 5b(c)(2). In reviewing the request, the  
6 Commission shall also take into account the fol-  
7 lowing factors:

8 “(i) The existence of significant out-  
9 standing notional exposures, trading liquid-  
10 ity and adequate pricing data.

11 “(ii) The availability of rule frame-  
12 work, capacity, operational expertise and  
13 resources, and credit support infrastruc-  
14 ture to clear the contract on terms that are  
15 consistent with the material terms and  
16 trading conventions on which the contract  
17 is then traded.

18 “(iii) The effect on the mitigation of  
19 systemic risk, taking into account the size  
20 of the market for such contract and the re-  
21 sources of the derivative clearing organiza-  
22 tion available to clear the contract.

23 “(iv) The effect on competition.

24 “(v) The existence of reasonable legal  
25 certainty in the event of the insolvency of

1           the       relevant       derivative       clearing  
2           organiziation or 1 or more of its clearing  
3           members with regard to the treatment of  
4           customer and swap counterparty positions,  
5           funds, and property.

6           “(D) CURRENT CLEARING OF SWAPS.—  
7       Swaps that are accepted for clearing by a deriv-  
8       ative clearing organization before the effective  
9       date of the Over-the-Counter Derivatives Mar-  
10      kets Act of 2009 are deemed approved for pur-  
11      poses of this section.

12          “(E) RULES.—Not later than 180 days  
13      after the effective date of the Over-the-Counter  
14      Derivatives Markets Act of 2009, the Commis-  
15      sion shall adopt rules for a derivatives clearing  
16      organization’s submission for approval, pursu-  
17      ant to this paragraph, of a swap, or a group,  
18      category, type or class of swaps, that it seeks  
19      to accept for clearing.

20          “(3) STAY OF CLEARING REQUIREMENT.—

21           “(A) At any time after issuance of an ap-  
22      proval pursuant to paragraph (2), the Commis-  
23      sion, on application of a counterparty to a swap  
24      or on its own initiative, may stay the clearing  
25      requirement of paragraph (1) until the Commis-

1           sion completes a review of the terms of the  
2           swap (or the group, category, type or class of  
3           swaps) and the clearing arrangement.

4           “(B) DEADLINE.—The Commission shall  
5           complete a review undertaken pursuant to sub-  
6           paragraph (A) not later than 90 days after  
7           issuance of the stay, unless the derivatives  
8           clearing organization that clears the swap, or  
9           group, category, type or class of swaps, agrees  
10          to an extension of the time limitation estab-  
11          lished under this subparagraph.

12          “(C) DETERMINATION.—Upon completion  
13          of the review undertaken pursuant to subpara-  
14          graph (A), the Commission may—

15               “(i) determine, unconditionally or sub-  
16               ject to such terms and conditions as the  
17               Commission determines to be appropriate,  
18               that the swap, or group, category, type or  
19               class of swaps, must be cleared pursuant  
20               to this subsection if it finds that such  
21               clearing is consistent with section 5b(c)(2);  
22               or

23               “(ii) determine that the clearing re-  
24               quirement of paragraph (1) shall not apply

1 to the swap, or group, category, type or  
2 class of swaps.

3 “(D) RULES.—Not later than 180 days  
4 after the effective date of the Over-the-Counter  
5 Derivatives Markets Act of 2009, the Commis-  
6 sion shall adopt rules for reviewing, pursuant to  
7 this paragraph, a derivatives clearing organiza-  
8 tion’s clearing of a swap, or a group, category,  
9 type or class of swaps, that it has accepted for  
10 clearing.

11 “(4) PREVENTION OF EVASION.—The Commis-  
12 sion may prescribe rules under this subsection, or  
13 issue interpretations of the rules, as necessary to  
14 prevent evasions of this subsection.

15 “(5) REQUIRED REPORTING.—

16 “(A) IN GENERAL.—All swaps that are not  
17 accepted for clearing by any derivatives clearing  
18 organization shall be reported either to a swap  
19 repository described in section 21 or, if there is  
20 no repository that would accept the swap, to the  
21 Commission pursuant to section 4r within such  
22 time period as the Commission may by rule or  
23 regulation prescribe. Counterparties to a swap  
24 may agree which counterparty will report the  
25 swap as required by this paragraph.

1           “(B) SWAP DEALER DESIGNATION.—With  
2           regard to swaps where only 1 counterparty is a  
3           swap dealer, the swap dealer shall report the  
4           swap as required by this paragraph.

5           “(6) REPORTING TRANSITION RULES.—Rules  
6           adopted by the Commission under this section shall  
7           provide for the reporting of data, as follows:

8           “(A) Swaps entered into before the date of  
9           the enactment of this subsection shall be re-  
10          ported to a registered swap repository or the  
11          Commission no later than 180 days after the  
12          effective date of this subsection; and

13          “(B) Swaps entered into on or after such  
14          date of enactment shall be reported to a reg-  
15          istered swap repository or the Commission no  
16          later than the later of—

17                 “(i) 90 days after such effective date;  
18                 or

19                 “(ii) such other time after entering  
20                 into the swap as the Commission may pre-  
21                 scribe by rule or regulation.

22          “(7) CLEARING TRANSITION RULES.—

23                 “(A) Swaps entered into before the date of  
24                 the enactment of this subsection are exempt  
25                 from the clearing requirements of this sub-

1 section if reported pursuant to paragraph  
2 (6)(A).

3 “(B) Swaps entered into before becoming  
4 clearable pursuant to this subsection are ex-  
5 empt from the clearing requirements of this  
6 subsection if reported pursuant to paragraph  
7 (6)(B).

8 “(C) ENTERED INTO BEFORE TIER 1 DES-  
9 IGNATION.—Swaps entered into with a  
10 counterparty in reliance of the exception in  
11 paragraph (8) before designation of such  
12 counterparty as a [Tier 1 financial holding com-  
13 pany] are exempt from the clearing require-  
14 ments of this subsection.

15 “(8) EXCEPTIONS.—

16 “(A) IN GENERAL.—The requirements of  
17 paragraphs (1) and (3) shall not apply to a  
18 swap if—

19 “(i) one of the counterparties to the  
20 swap:

21 “(I) is not a swap dealer or  
22 major swap participant, and

23 “(II) can demonstrate to the  
24 Commission, in a manner set forth by  
25 the Commission, standards of busi-

1                   ness practice and risk management  
2                   appropriate for non-cleared swaps;  
3                   and

4                   “(ii) none of the counterparties to the  
5                   swap is a [Tier 1 financial holding com-  
6                   pany].

7                   “(B) ABUSE OF EXEMPTION.—The Com-  
8                   mission may prescribe rules under this sub-  
9                   section, or issue interpretations of the rules, as  
10                  necessary to prevent abuse of the exemption in  
11                  subparagraph (A) by swap dealers and major  
12                  swap participants.

13               “(k) EXECUTION TRANSPARENCY.—

14               “(1) REQUIREMENT.—A swap that is subject to  
15               the clearing requirement of subsection (j) shall be  
16               traded on or through a board of trade designated as  
17               a contract market under section 5, or on or through  
18               an alternative swap execution facility registered  
19               under section 5h, that lists the swap for trading.

20               “(2) EXCEPTIONS.—The requirement of para-  
21               graph (1) shall not apply to a swap if no designated  
22               contract market or alternative swap execution facil-  
23               ity lists the swap for trading.

24               “(3) AGRICULTURAL SWAPS.—No person shall  
25               offer to enter into, enter into or confirm the execu-



1       tion of, any swap in an agricultural commodity that  
2       is subject to paragraph (1) except pursuant to a rule  
3       or regulation of the Commission allowing the swap  
4       under such terms and conditions as the Commission  
5       shall prescribe.”.

6       (b) DERIVATIVES CLEARING ORGANIZATIONS.—

7           (1) Subsections (a) and (b) of section 5b of  
8       such Act (7 U.S.C. 7a-1) are amended to read as  
9       follows:

10       “(a) REGISTRATION REQUIREMENT.—It shall be un-  
11       lawful for any entity, unless registered with the Commis-  
12       sion, directly or indirectly to make use of the mails or any  
13       means or instrumentality of interstate commerce to per-  
14       form the functions of a derivatives clearing organization  
15       described in section 1a(10) of this Act with respect to—

16           “(1) a contract of sale of a commodity for fu-  
17       ture delivery (or option on such a contract) or option  
18       on a commodity, in each case unless the contract or  
19       option is—

20           “(A) excluded from this Act by section  
21       2(a)(1)(C)(i), 2(c), or 2(f); or

22           “(B) a security futures product cleared by  
23       a clearing agency registered with the Securities  
24       and Exchange Commission under the Securities

1 Exchange Act of 1934 (15 U.S.C. 78a et seq.)

2 ; or

3 “(2) a swap.

4 “(b) VOLUNTARY REGISTRATION.—A person that  
5 clears agreements, contracts, or transactions that are not  
6 required to be cleared under this Act may register with  
7 the Commission as a derivatives clearing organization.”.

8 (2) Section 5b of such Act (7 U.S.C. 7a-1) is  
9 amended by adding at the end the following:

10 “(g) RULES.—Not later than 180 days after the ef-  
11 fective date of the Over-the-Counter Derivatives Markets  
12 Act of 2009, the Commission, in consultation with the Se-  
13 curities and Exchange Commission, shall adopt rules gov-  
14 erning persons that are registered as derivatives clearing  
15 organizations for swaps under this subsection.

16 “(h) EXEMPTIONS.—The Commission may exempt,  
17 conditionally or unconditionally, a derivatives clearing or-  
18 ganization from registration under this section for the  
19 clearing of swaps if the Commission finds that the deriva-  
20 tives clearing organization is subject to comparable, com-  
21 prehensive supervision and regulation on a consolidated  
22 basis by the Securities and Exchange Commission, a Pru-  
23 dential Regulator or the appropriate governmental au-  
24 thorities in the organization’s home country.

25 “(i) DESIGNATION OF COMPLIANCE OFFICER.—

1           “(1) IN GENERAL.—Each derivatives clearing  
2           organization shall designate an individual to serve as  
3           a compliance officer.

4           “(2) DUTIES.—The compliance officer—

5                   “(A) shall report directly to the board or  
6                   to the senior officer of the derivatives clearing  
7                   organization; and

8                   “(B) shall—

9                           “(i) review compliance with the core  
10                          principles in section 5b(c)(2).

11                          “(ii) in consultation with the board of  
12                          the derivatives clearing organization, a  
13                          body performing a function similar to that  
14                          of a board, or the senior officer of the de-  
15                          rivatives clearing organization, resolve any  
16                          conflicts of interest that may arise;

17                          “(iii) be responsible for administering  
18                          the policies and procedures required to be  
19                          established pursuant to this section; and

20                          “(iv) ensure compliance with this Act  
21                          and the rules and regulations issued under  
22                          this Act, including rules prescribed by the  
23                          Commission pursuant to this section; and

24                          “(C) shall establish procedures for remedi-  
25                          ation of non-compliance issues found during

1 compliance office reviews, lookbacks, internal or  
2 external audit findings, self-reported errors, or  
3 through validated complaints. The procedures  
4 shall establish the handling, management re-  
5 sponse, remediation, re-testing, and closing of  
6 non-compliant issues.

7 “(3) ANNUAL REPORTS REQUIRED.—The com-  
8 pliance officer shall annually prepare and sign a re-  
9 port on the compliance of the derivatives clearing or-  
10 ganization with the commodity laws and the policies  
11 and procedures of the derivatives clearing organiza-  
12 tion, including the code of ethics and conflict of in-  
13 terest policies of the derivatives clearing organiza-  
14 tion, in accordance with rules prescribed by the  
15 Commission. The compliance report shall accompany  
16 the financial reports of the derivatives clearing orga-  
17 nization that are required to be furnished to the  
18 Commission pursuant to this section and shall in-  
19 clude a certification that, under penalty of law, the  
20 report is accurate and complete.”.

21 (3) Section 5b(c)(2) of such Act (7 U.S.C. 7a-  
22 1(c)(2)) is amended to read as follows:

23 “(2) CORE PRINCIPLES FOR DERIVATIVES  
24 CLEARING ORGANIZATIONS.—

1           “(A) IN GENERAL.—To be registered and  
2           to maintain registration as a derivatives clear-  
3           ing organization, a derivatives clearing organi-  
4           zation shall comply with the core principles  
5           specified in this paragraph and any requirement  
6           that the Commission may impose by rule or  
7           regulation pursuant to section 8a(5). Except  
8           where the Commission determines otherwise by  
9           rule or regulation, a derivatives clearing organi-  
10          zation shall have reasonable discretion in estab-  
11          lishing the manner in which the organization  
12          complies with the core principles.

13           “(B) FINANCIAL RESOURCES.—

14           “(i) The derivatives clearing organiza-  
15           tion shall have adequate financial, oper-  
16           ational, and managerial resources to dis-  
17           charge the responsibilities of the organiza-  
18           tion.

19           “(ii) The financial resources of the de-  
20           rivatives clearing organization shall at a  
21           minimum exceed the total amount that  
22           would—

23           “(I) enable the organization to  
24           meet the financial obligations of the  
25           organization to the members of, and

1 participants in, the organization, not-  
2 withstanding a default by the member  
3 or participant creating the largest fi-  
4 nancial exposure for the organization  
5 in extreme but plausible market condi-  
6 tions; and

7 “(II) enable the organization to  
8 cover the operating costs of the orga-  
9 nization for a period of 1 year, cal-  
10 culated on a rolling basis.

11 “(C) PARTICIPANT AND PRODUCT ELIGI-  
12 BILITY.—

13 “(i) The derivatives clearing organiza-  
14 tion shall establish—

15 “(I) appropriate admission and  
16 continuing eligibility standards (in-  
17 cluding sufficient financial resources  
18 and operational capacity to meet obli-  
19 gations arising from participation in  
20 the organization) for members of and  
21 participants in the organization; and

22 “(II) appropriate standards for  
23 determining eligibility of agreements,  
24 contracts, or transactions submitted  
25 to the organization for clearing.

1 “(ii) The derivatives clearing organi-  
2 zation shall have procedures in place to  
3 verify that participation and membership  
4 requirements are met on an ongoing basis.

5 “(iii) The participation and member-  
6 ship requirements of the derivatives clear-  
7 ing organization shall be objective, publicly  
8 disclosed, and permit fair and open access.

9 “(D) RISK MANAGEMENT.—

10 “(i) The derivatives clearing organiza-  
11 tion shall have the ability to manage the  
12 risks associated with discharging the re-  
13 sponsibilities of a derivatives clearing orga-  
14 nization through the use of appropriate  
15 tools and procedures.

16 “(ii) The derivatives clearing organi-  
17 zation shall measure the credit exposures  
18 of the organization to the members of, and  
19 participants in, the organization at least  
20 once each business day and shall monitor  
21 the exposures throughout the business day.

22 “(iii) Through margin requirements  
23 and other risk control mechanisms, a de-  
24 rivatives clearing organization shall limit  
25 the exposures of the organization to poten-

1 tial losses from defaults by the members  
2 of, and participants in, the organization so  
3 that the operations of the organization  
4 would not be disrupted and non-defaulting  
5 members or participants would not be ex-  
6 posed to losses that they cannot anticipate  
7 or control.

8 “(iv) Margin required from all mem-  
9 bers and participants shall be sufficient to  
10 cover potential exposures in normal market  
11 conditions.

12 “(v) The models and parameters used  
13 in setting margin requirements shall be  
14 risk-based and reviewed regularly.

15 “(E) SETTLEMENT PROCEDURES.—The  
16 derivatives clearing organization shall—

17 “(i) complete money settlements on a  
18 timely basis, and not less than once each  
19 business day;

20 “(ii) employ money settlement ar-  
21 rangements that eliminate or strictly limit  
22 the exposure of the organization to settle-  
23 ment bank risks, such as credit and liquid-  
24 ity risks from the use of banks to effect  
25 money settlements;



1 “(iii) ensure money settlements are  
2 final when effected;

3 “(iv) maintain an accurate record of  
4 the flow of funds associated with each  
5 money settlement;

6 “(v) have the ability to comply with  
7 the terms and conditions of any permitted  
8 netting or offset arrangements with other  
9 clearing organizations; and

10 “(vi) for physical settlements, estab-  
11 lish rules that clearly state the obligations  
12 of the organization with respect to physical  
13 deliveries, including how risks from these  
14 obligations shall be identified and man-  
15 aged.

16 “(F) TREATMENT OF FUNDS.—

17 “(i) The derivatives clearing organiza-  
18 tion shall have standards and procedures  
19 designed to protect and ensure the safety  
20 of member and participant funds and as-  
21 sets.

22 “(ii) The derivatives clearing organi-  
23 zation shall hold member and participant  
24 funds and assets in a manner whereby risk  
25 of loss or of delay in the access of the or-

1 organization to the assets and funds is mini-  
2 mized.

3 “(iii) Assets and funds invested by the  
4 derivatives clearing organization shall be  
5 held in instruments with minimal credit,  
6 market, and liquidity risks.

7 “(G) DEFAULT RULES AND PROCE-  
8 DURES.—

9 “(i) The derivatives clearing organiza-  
10 tion shall have rules and procedures de-  
11 signed to allow for the efficient, fair, and  
12 safe management of events when members  
13 or participants become insolvent or other-  
14 wise default on their obligations to the or-  
15 ganization.

16 “(ii) The default procedures of the de-  
17 rivatives clearing organization shall be  
18 clearly stated, and they shall ensure that  
19 the organization can take timely action to  
20 contain losses and liquidity pressures and  
21 to continue meeting the obligations of the  
22 organization.

23 “(iii) The default procedures shall be  
24 publicly available.

1                   “(H) RULE ENFORCEMENT.—The deriva-  
2                   tives clearing organization shall—

3                   “(i) maintain adequate arrangements  
4                   and resources for the effective monitoring  
5                   and enforcement of compliance with rules  
6                   of the organization and for resolution of  
7                   disputes; and

8                   “(ii) have the authority and ability to  
9                   discipline, limit, suspend, or terminate the  
10                  activities of a member of participant for  
11                  violations of rules of the organization.

12                  “(I) SYSTEM SAFEGUARDS.—The deriva-  
13                  tives clearing organization shall—

14                  “(i) establish and maintain a program  
15                  of risk analysis and oversight to identify  
16                  and minimize sources of operational risk  
17                  through the development of appropriate  
18                  controls and procedures, and the develop-  
19                  ment of automated systems, that are reli-  
20                  able, secure, and have adequate scalable  
21                  capacity;

22                  “(ii) establish and maintain emer-  
23                  gency procedures, backup facilities, and a  
24                  plan for disaster recovery that allows for  
25                  the timely recovery and resumption of op-

1                   erations and the fulfillment of the respon-  
2                   sibilities and obligations of the organiza-  
3                   tion; and

4                   “(iii) periodically conduct tests to  
5                   verify that backup resources are sufficient  
6                   to ensure continued order processing and  
7                   trade matching, price reporting, market  
8                   surveillance, and maintenance of a com-  
9                   prehensive and accurate audit trail.

10                  “(J) REPORTING.—The derivatives clear-  
11                  ing organization shall provide to the Commis-  
12                  sion all information necessary for the Commis-  
13                  sion to conduct oversight of the organization.

14                  “(K) RECORDKEEPING.—The derivatives  
15                  clearing organization shall maintain records of  
16                  all activities related to the business of the orga-  
17                  nization as a derivatives clearing organization  
18                  in a form and manner acceptable to the Com-  
19                  mission for a period of 5 years.

20                  “(L) PUBLIC INFORMATION.—

21                         “(i) The derivatives clearing organiza-  
22                         tion shall provide market participants with  
23                         sufficient information to identify and  
24                         evaluate accurately the risks and costs as-

1           sociated with using the services of the or-  
2           ganization.

3           “(ii) The derivatives clearing organi-  
4           zation shall make information concerning  
5           the rules and operating procedures gov-  
6           erning the clearing and settlement systems  
7           (including default procedures) of the orga-  
8           nization available to market participants.

9           “(iii) The derivatives clearing organi-  
10          zation shall disclose publicly and to the  
11          Commission information concerning—

12               “(I) the terms and conditions of  
13               contracts, agreements, and trans-  
14               actions cleared and settled by the or-  
15               ganization;

16               “(II) clearing and other fees that  
17               the organization charges the members  
18               of, and participants in, the organiza-  
19               tion;

20               “(III) the margin-setting method-  
21               ology and the size and composition of  
22               the financial resource package of the  
23               organization;

24               “(IV) other information relevant  
25               to participation in the settlement and

1 clearing activities of the organization;  
2 and

3 “(V) daily settlement prices, vol-  
4 ume, and open interest for all con-  
5 tracts settled or cleared by the organi-  
6 zation.

7 “(M) INFORMATION-SHARING.—The de-  
8 rivatives clearing organization shall—

9 “(i) enter into and abide by the terms  
10 of all appropriate and applicable domestic  
11 and international information-sharing  
12 agreements; and

13 “(ii) use relevant information obtained  
14 from the agreements in carrying out the  
15 risk management program of the organiza-  
16 tion.

17 “(N) ANTITRUST CONSIDERATIONS.—Un-  
18 less appropriate to achieve the purposes of this  
19 chapter, the derivatives clearing organization  
20 shall avoid—

21 “(i) adopting any rule or taking any  
22 action that results in any unreasonable re-  
23 straint of trade; or

24 “(ii) imposing any material anti-  
25 competitive burden.

1                   “(O) GOVERNANCE FITNESS STAND-  
2 ARDS.—

3                   “(i) The derivatives clearing organiza-  
4 tion shall establish governance arrange-  
5 ments that are transparent in order to ful-  
6 fill public interest requirements and to  
7 support the objectives of the owners of,  
8 and participants in, the organization.

9                   “(ii) The derivatives clearing organi-  
10 zation shall establish and enforce appro-  
11 priate fitness standards for the directors,  
12 members of any disciplinary committee,  
13 and members of the organization, and any  
14 other persons with direct access to the set-  
15 tlement or clearing activities of the organi-  
16 zation, including any parties affiliated with  
17 any of the persons described in this sub-  
18 paragraph.

19                   “(P) CONFLICTS OF INTEREST.—The de-  
20 rivatives clearing organization shall establish  
21 and enforce rules to minimize conflicts of inter-  
22 est in the decision-making process of the orga-  
23 nization and establish a process for resolving  
24 the conflicts of interest.

1           “(Q) COMPOSITION OF THE BOARDS.—The  
2           derivatives clearing organization shall ensure  
3           that the composition of the governing board or  
4           committee includes market participants.

5           “(R) LEGAL RISK.—The derivatives clear-  
6           ing organization shall have a well founded,  
7           transparent, and enforceable legal framework  
8           for each aspect of its activities.”.

9           (4) Section 5b of such Act (7 U.S.C. 7a-1) is  
10          further amended by adding after subsection (j), as  
11          added by this section, the following:

12         “(k) REPORTING.—

13                 “(1) IN GENERAL.—A derivatives clearing orga-  
14                 nization that clears swaps shall provide to the Com-  
15                 mission all information determined by the Commis-  
16                 sion to be necessary to perform the responsibilities  
17                 of the Commission under this Act. The Commission  
18                 shall adopt data collection and maintenance require-  
19                 ments for swaps cleared by derivatives clearing orga-  
20                 nizations that are comparable to the corresponding  
21                 requirements for swaps accepted by swap reposi-  
22                 tories and swaps traded on alternative swap execu-  
23                 tion facilities. The Commission shall share the infor-  
24                 mation, upon request, with the Board, the Securities  
25                 and Exchange Commission, the appropriate Federal



1 banking agencies, the [Financial Services Oversight  
2 Council], and the Department of Justice or to other  
3 persons the Commission deems appropriate, includ-  
4 ing foreign financial supervisors (including foreign  
5 futures authorities), foreign central banks, and for-  
6 eign ministries that comply with the provisions of  
7 section 8.

8 “(2) PUBLIC INFORMATION.—A derivatives  
9 clearing organization that clears swaps shall provide  
10 to the Commission, or its designee, such information  
11 as is required by, and in a form and at a frequency  
12 to be determined by, the Commission, in order to  
13 comply with the public reporting requirements con-  
14 tained in section 8(j).”.

15 (5) Section 8(e) of such Act (7 U.S.C. 12(e))  
16 is amended in the last sentence by inserting “central  
17 bank and ministries” after “department” each place  
18 it appears.

19 (c) LEGAL CERTAINTY FOR IDENTIFIED BANKING  
20 PRODUCTS.—

21 (1) REPEAL.—Sections 402(d), 404, 407,  
22 408(b), and 408(c)(2) of the Legal Certainty for  
23 Bank Products Act of 2000 (7 U.S.C. 27(d), 27b,  
24 27e, 27f(b), and 27f(c)(2)) are repealed.

1           (2) **LEGAL CERTAINTY.**—Section 403 of the  
2       Legal Certainty for Bank Products Act of 2000 (7  
3       U.S.C. 27a) is amended to read as follows:

4       **“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**

5           “(a) **EXCLUSION.**—Except as provided in subsection  
6       (b) or (c), neither the provisions of the Commodity Ex-  
7       change Act (7 U.S.C. 1 et seq.), nor the Securities Act  
8       of 1933, nor the Securities Exchange Act of 1934 shall  
9       apply to, and the Commodity Futures Trading Commis-  
10      sion and the Securities and Exchange Commission shall  
11      not exercise regulatory authority under any of such stat-  
12      utes with respect to, an identified banking product.

13          “(b) **EXCEPTION.**—An appropriate Federal banking  
14      agency may except an identified banking product of a  
15      bank under its regulatory jurisdiction from the exclusion  
16      in subsection (a) if the agency determines, in consultation  
17      with the Commodity Futures Trading Commission and the  
18      Securities and Exchange Commission, that the product—

19            “(1) would meet the definition of swap in sec-  
20      tion 1a(35) of the Commodity Exchange Act (7  
21      U.S.C. 1a(35)) or security-based swap in section  
22      1a(38) of such Act (7 U.S.C. 1a(38)); and

23            “(2) has become known to the trade as a swap  
24      or security-based swap, or otherwise has been struc-  
25      tured as an identified banking product for the pur-

1 pose of evading the provisions of the Commodity Ex-  
2 change Act (7 U.S.C. 1 et seq.), the Securities Act  
3 of 1933 (15 U.S.C. 77a et seq.), or the Securities  
4 Exchange Act of 1934 (15 U.S.C. 78a et seq.).

5 “(c) EXCEPTION.—The exclusion in subsection (a)  
6 shall not apply to an identified banking product that—

7 “(1) is a product of a bank that is not under  
8 the regulatory jurisdiction of an appropriate Federal  
9 banking agency;

10 “(2) meets the definition of swap in section  
11 1a(35) of the Commodity Exchange Act or security-  
12 based swap in section 3(a)(68) of the Securities and  
13 Exchange Act of 1934; and

14 “(3) has become known to the trade as a swap  
15 or security-based swap, or otherwise has been struc-  
16 tured as an identified banking product for the pri-  
17 mary purpose of evading the provisions of the Com-  
18modity Exchange Act (7 U.S.C. 1 et seq.), the Secu-  
19rities Act of 1933 (15 U.S.C. 77a et seq.), or the  
20Securities Exchange Act of 1934 (15 U.S.C. 78a et  
21seq.).”.

22 **SEC. 104. PUBLIC REPORTING OF AGGREGATE SWAP DATA.**

23 Section 8 of the Commodity Exchange Act (7 U.S.C.  
24 12) is amended by adding at the end the following:

1       “(j) PUBLIC REPORTING OF AGGREGATE SWAP  
2 DATA.—

3               “(1) IN GENERAL.—The Commission, or a per-  
4 son designated by the Commission pursuant to para-  
5 graph (2), shall make available to the public, in a  
6 manner that does not disclose the business trans-  
7 actions and market positions of any person, aggre-  
8 gate data on swap trading volumes and positions  
9 from the sources set forth in paragraph (3);

10              “(2) DESIGNEE OF THE COMMISSION.—The  
11 Commission may designate a derivatives clearing or-  
12 ganization or a swap repository to carry out the  
13 public reporting described in paragraph (1).

14              “(3) SOURCES OF INFORMATION.—The sources  
15 of the information to be publicly reported as de-  
16 scribed in paragraph (1) are—

17                      “(A) derivatives clearing organizations  
18 pursuant to section 5b(k)(2);

19                      “(B) swap repositories pursuant to section  
20 21(c)(3); and

21                      “(C) reports received by the Commission  
22 pursuant to section 4r.”.

23 **SEC. 105. SWAP REPOSITORIES.**

24       The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
25 is amended by inserting after section 20 the following:

1 **“SEC. 21. SWAP REPOSITORIES.**

2 “(a) REGISTRATION REQUIREMENT.—

3 “(1) IN GENERAL.—It shall be unlawful for any  
4 person, unless registered with the Commission, di-  
5 rectly or indirectly to make use of the mails or any  
6 means or instrumentality of interstate commerce to  
7 perform the functions of a swap repository.

8 “(2) INSPECTION AND EXAMINATION.—Reg-  
9 istered swap repositories shall be subject to inspec-  
10 tion and examination by any representative of the  
11 Commission.

12 “(b) STANDARD SETTING.—

13 “(1) DATA IDENTIFICATION.—The Commission  
14 shall prescribe standards that specify the data ele-  
15 ments for each swap that shall be collected and  
16 maintained by each registered swap repository.

17 “(2) DATA COLLECTION AND MAINTENANCE.—  
18 The Commission shall prescribe data collection and  
19 data maintenance standards for swap repositories.

20 “(3) COMPARABILITY.—The standards pre-  
21 scribed by the Commission under this subsection  
22 shall be comparable to the data standards imposed  
23 by the Commission on derivatives clearing organiza-  
24 tions that clear swaps.

25 “(c) DUTIES.—A swap repository shall—

1           “(1) accept data prescribed by the Commission  
2           for each swap under subsection (b);

3           “(2) maintain the data in such form and man-  
4           ner and for such period as may be required by the  
5           Commission;

6           “(3) provide to the Commission, or its designee,  
7           such information as is required by, and in a form  
8           and at a frequency to be determined by, the Com-  
9           mission, in order to comply with the public reporting  
10          requirements contained in section 8(j); and

11          “(4) make available, on a confidential basis  
12          pursuant to section 8, all data obtained by the swap  
13          repository, including individual counterparty trade  
14          and position data, to the Commission, the appro-  
15          priate Federal banking agencies, the [Financial  
16          Services Oversight Council], the Securities and Ex-  
17          change Commission, and the Department of Justice  
18          or to other persons the Commission deems appro-  
19          priate, including foreign financial supervisors (in-  
20          cluding foreign futures authorities), foreign central  
21          banks, and foreign ministries.

22          “(d) RULES.—Not later than 180 days after the ef-  
23          fective date of the Over-the-Counter Derivatives Markets  
24          Act of 2009, the Commission shall adopt rules governing  
25          persons that are registered under this section, including

1 uniform rules that specify the data elements that shall be  
2 collected and maintained.

3 “(e) EXEMPTIONS.—The Commission may exempt,  
4 conditionally or unconditionally, a swap repository from  
5 the requirements of this section if the Commission finds  
6 that the swap repository is subject to comparable, com-  
7 prehensive supervision and regulation on a consolidated  
8 basis by the Securities and Exchange Commission, a Pru-  
9 dential Regulator or the appropriate governmental au-  
10 thorities in the organization’s home country.”.

11 **SEC. 106. REPORTING AND RECORDKEEPING.**

12 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
13 is amended by inserting after section 4q the following:

14 **“SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN**  
15 **SWAPS.**

16 “(a) IN GENERAL.—Any person who enters into a  
17 swap and—

18 “(1) did not clear the swap in accordance with  
19 section 2(j)(1); and

20 “(2) did not have data regarding the swap ac-  
21 cepted by a swap repository in accordance with rules  
22 (including timeframes) adopted by the Commission  
23 under section 21,  
24 shall meet the requirements in subsection (b).

1 “(b) REPORTS.—Any person described in subsection  
2 (a) shall—

3 “(1) make such reports in such form and man-  
4 ner and for such period as the Commission shall pre-  
5 scribe by rule or regulation regarding the swaps held  
6 by the person; and

7 “(2) keep books and records pertaining to the  
8 swaps held by the person in such form and manner  
9 and for such period as may be required by the Com-  
10 mission, which books and records shall be open to  
11 inspection by any representative of the Commission,  
12 an appropriate Federal banking agency, the Securi-  
13 ties and Exchange Commission, the [Financial Serv-  
14 ices Oversight Council], and the Department of Jus-  
15 tice.

16 “(c) IDENTICAL DATA.—In adopting rules under this  
17 section, the Commission shall require persons described in  
18 subsection (a) to report the same or a more comprehensive  
19 set of data than the Commission requires swap reposi-  
20 tories to collect under section 21.”.

21 **SEC. 107. REGISTRATION AND REGULATION OF SWAP DEAL-**  
22 **ERS AND MAJOR SWAP PARTICIPANTS.**

23 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
24 is amended by inserting after section 4r (as added by sec-  
25 tion 106) the following:



1 **“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEAL-**  
2 **ERS AND MAJOR SWAP PARTICIPANTS.**

3 “(a) REGISTRATION.—

4 “(1) It shall be unlawful for any person to act  
5 as a swap dealer unless the person is registered as  
6 a swap dealer with the Commission.

7 “(2) It shall be unlawful for any person to act  
8 as a major swap participant unless the person is  
9 registered as a major swap participant with the  
10 Commission.

11 “(b) REQUIREMENTS.—

12 “(1) IN GENERAL.—A person shall register as  
13 a swap dealer or major swap participant by filing a  
14 registration application with the Commission.

15 “(2) CONTENTS.—The application shall be  
16 made in such form and manner as prescribed by the  
17 Commission, giving any information and facts as the  
18 Commission may deem necessary concerning the  
19 business in which the applicant is or will be engaged.  
20 The person, when registered as a swap dealer or  
21 major swap participant, shall continue to report and  
22 furnish to the Commission such information per-  
23 taining to the person’s business as the Commission  
24 may require.

1           “(3) EXPIRATION.—Each registration shall ex-  
2       pire at such time as the Commission may by rule or  
3       regulation prescribe.

4           “(4) RULES.—Except as provided in sub-  
5       sections (c), (d) and (e), the Commission may pre-  
6       scribe rules applicable to swap dealers and major  
7       swap participants, including rules that limit the ac-  
8       tivities of swap dealers and major swap participants.

9           “(5) TRANSITION.—Rules adopted under this  
10      section shall provide for the registration of swap  
11      dealers and major swap participants no later than 1  
12      year after the effective date of the Over-the-Counter  
13      Derivatives Markets Act of 2009.

14          “(6) STATUTORY DISQUALIFICATION.—Except  
15      to the extent otherwise specifically provided by rule,  
16      regulation, or order, it shall be unlawful for a swap  
17      dealer or a major swap participant to permit any  
18      person associated with a swap dealer or a major  
19      swap participant who is subject to a statutory dis-  
20      qualification to effect or be involved in effecting  
21      swaps on behalf of the swap dealer or major swap  
22      participant, if the swap dealer or major swap partici-  
23      pant knew, or in the exercise of reasonable care  
24      should have known, of the statutory disqualification.

25          “(c) RULES.—

1           “(1) IN GENERAL.—Not later than 180 days  
2           after the effective date of this section, the Commis-  
3           sion shall adopt rules for persons that are registered  
4           as swap dealers or major swap participants under  
5           this section.

6           “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-  
7           MENTS.—The Commission shall not prescribe rules  
8           imposing prudential requirements (including activity  
9           restrictions) on swap dealers or major swap partici-  
10          pants for which there is a Prudential Regulator.  
11          This provision shall not be construed as limiting the  
12          authority of the Commission to prescribe appropriate  
13          business conduct, reporting, and recordkeeping re-  
14          quirements to protect investors.

15          “(d) CAPITAL AND MARGIN REQUIREMENTS.—

16               “(1) IN GENERAL.—

17                   “(A) BANK SWAP DEALERS AND MAJOR  
18                   SWAP PARTICIPANTS.—Each registered swap  
19                   dealer and major swap participant for which  
20                   there is a Prudential Regulator shall meet such  
21                   minimum capital requirements and minimum  
22                   initial and variation margin requirements as the  
23                   Prudential Regulators shall by rule or regula-  
24                   tion jointly prescribe that:

1 “(i) help ensure the safety and sound-  
2 ness of the swap dealer or major swap par-  
3 ticipant; and

4 “(ii) are appropriate for the risk asso-  
5 ciated with the non-cleared swaps held as  
6 a swap dealer or major swap participant.

7 “(B) NON-BANK SWAP DEALERS AND  
8 MAJOR SWAP PARTICIPANTS.—Each registered  
9 swap dealer and major swap participant for  
10 which there is not a Prudential Regulator shall  
11 meet such minimum capital requirements and  
12 minimum initial and variation margin require-  
13 ments as the Commission and the Securities  
14 and Exchange Commission, shall by rule or reg-  
15 ulation prescribe that:

16 “(i) help ensure the safety and sound-  
17 ness of the swap dealer or major swap par-  
18 ticipant; and

19 “(ii) are appropriate for the risk asso-  
20 ciated with the non-cleared swaps held as  
21 a swap dealer or major swap participant.

22 “(2) RULES.—

23 “(A) BANK SWAP DEALERS AND MAJOR  
24 SWAP PARTICIPANTS.—Within 180 days after  
25 the date of the enactment of this section, the

1 Prudential Regulators, in consultation with the  
2 Commission and the Securities and Exchange  
3 Commission, shall jointly adopt rules imposing  
4 capital and margin requirements under this  
5 subsection for swap dealers and major swap  
6 participants, with respect to their activities as  
7 a swap dealer or major swap participant for  
8 which there is a Prudential Regulator

9 “(B) NON-BANK SWAP DEALERS AND  
10 MAJOR SWAP PARTICIPANTS.—Within 180 days  
11 after such date of enactment, the Commission  
12 shall adopt rules imposing capital and margin  
13 requirements under this subsection for swap  
14 dealers and major swap participants for which  
15 there is no Prudential Regulator.

16 “(3) SET-ASIDE REQUIREMENTS.—A person  
17 shall not initially be registered as a swap dealer, or  
18 continue to be so registered, unless the person, at all  
19 times—

20 “(A) sets aside, in accordance with such  
21 rules, regulations, or orders as the Commission  
22 may promulgate, the following amounts or  
23 property for each swap to which the person is  
24 a party and that is not cleared—

1 “(i) an amount equal to the minimum  
2 margin requirement for the swap that the  
3 Commission may prescribe, by rule, regula-  
4 tion, or order with respect to the person,  
5 pursuant to subparagraph (A); plus

6 “(ii) any additional amount that the  
7 person and the counterparty agree shall be  
8 set aside from the person’s own funds or  
9 property in order to margin, guarantee, or  
10 secure the swap; plus

11 “(iii) any amount that the person re-  
12 ceives from its counterparty in order to  
13 margin, guarantee, or secure the swap;  
14 plus

15 “(iv) the greater of—

16 “(I) any accrued but unpaid  
17 losses the person has incurred in con-  
18 nection with the swap, less any ac-  
19 crued but unpaid gains the person has  
20 earned in connection with the swap,  
21 or

22 “(II) zero; less

23 “(v) any amount that the person posts  
24 with its counterparty in order to margin,  
25 guarantee, or secure the swap.

1           “(B) treats, deals with, and limits its in-  
2           vestments of any amount that the person is re-  
3           quired to set aside, pursuant to subparagraph  
4           (A)(i), in accordance with any rule, regulation,  
5           or order that the Commission may promulgate.

6           “(4) AUTHORITY.—Nothing in this section shall  
7           limit the authority of the Commission to set capital  
8           requirements for a registered futures commission  
9           merchant or introducing broker in accordance with  
10          section 4f.

11          “(e) REPORTING AND RECORDKEEPING.—

12           “(1) IN GENERAL.—Each registered swap deal-  
13          er and major swap participant—

14           “(A) shall make such reports as are pre-  
15          scribed by the Commission by rule or regulation  
16          regarding the transactions and positions and fi-  
17          nancial condition of the person;

18           “(B) for which—

19           “(i) there is a Prudential Regulator,  
20          shall keep books and records of all activi-  
21          ties related to its business as a swap dealer  
22          or major swap participant in such form  
23          and manner and for such period as may be  
24          prescribed by the Commission by rule or  
25          regulation;

1                   “(ii) there is no Prudential Regulator,  
2                   shall keep books and records in such form  
3                   and manner and for such period as may be  
4                   prescribed by the Commission by rule or  
5                   regulation; and

6                   “(C) shall keep the books and records open  
7                   to inspection and examination by any represent-  
8                   ative of the Commission.

9                   “(2) RULES.—Within 365 days after the date  
10                  of the enactment of this section, the Commission  
11                  shall adopt rules governing reporting and record-  
12                  keeping for swap dealers and major swap partici-  
13                  pants.

14                 “(f) DAILY TRADING RECORDS.—

15                 “(1) IN GENERAL.—Each registered swap deal-  
16                 er and major swap participant shall maintain daily  
17                 trading records of its swaps and all related records  
18                 (including related cash or forward transactions) and  
19                 recorded communications including but not limited  
20                 to electronic mail, instant messages, and recordings  
21                 of telephone calls, for such period as may be pre-  
22                 scribed by the Commission by rule or regulation.

23                 “(2) INFORMATION REQUIREMENTS.—The daily  
24                 trading records shall include such information as the  
25                 Commission shall prescribe by rule or regulation.



1           “(3) CUSTOMER RECORDS.—Each registered  
2 swap dealer and major swap participant shall main-  
3 tain daily trading records for each customer or  
4 counterparty in such manner and form as to be  
5 identifiable with each swap transaction.

6           “(4) AUDIT TRAIL.—Each registered swap deal-  
7 er and major swap participant shall maintain a com-  
8 plete audit trail for conducting comprehensive and  
9 accurate trade reconstructions.

10           “(5) RULES.—Within 365 days after the date  
11 of the enactment of this section, the Commission  
12 shall adopt rules governing daily trading records for  
13 swap dealers and major swap participants.

14           “(g) BUSINESS CONDUCT STANDARDS.—

15           “(1) IN GENERAL.—Each registered swap deal-  
16 er and major swap participant shall conform with  
17 business conduct standards as may be prescribed by  
18 the Commission by rule or regulation addressing—

19                   “(A) fraud, manipulation, and other abu-  
20 sive practices involving swaps (including swaps  
21 that are offered but not entered into);

22                   “(B) diligent supervision of its business as  
23 a swap dealer;

24                   “(C) adherence to all applicable position  
25 limits; and

1           “(D) such other matters as the Commis-  
2           sion shall determine to be necessary or appro-  
3           priate.

4           “(2) BUSINESS CONDUCT REQUIREMENTS.—  
5           Business conduct requirements adopted by the Com-  
6           mission shall—

7           “(A) establish the standard of care for a  
8           swap dealer or major swap participant to verify  
9           that any counterparty meets the eligibility  
10          standards for an eligible contract participant;

11          “(B) require disclosure by the swap dealer  
12          or major swap participant to any counterparty  
13          to the transaction (other than a swap dealer or  
14          major swap participant) of:

15               “(i) information about the material  
16               risks and characteristics of the swap;

17               “(ii) the source and amount of any  
18               fees or other material remuneration that  
19               the swap dealer or major swap participant  
20               would directly or indirectly expect to re-  
21               ceive in connection with the swap; and

22               “(iii) any other material incentives or  
23               conflicts of interest that the swap dealer or  
24               major swap participant may have in con-  
25               nection with the swap; and

1           “(C) establish such other standards and  
2           requirements as the Commission may determine  
3           are necessary or appropriate in the public inter-  
4           est, for the protection of investors, or otherwise  
5           in furtherance of the purposes of this Act.

6           “(3) RULES.—The Commission shall prescribe  
7           rules under this subsection governing business con-  
8           duct standards for swap dealers and major swap  
9           participants within 365 days of the enactment of the  
10          Over-the-Counter Derivatives Markets Act of 2009.

11          “(h) DOCUMENTATION AND BACK OFFICE STAND-  
12          ARDS.—

13           “(1) IN GENERAL.—Each registered swap deal-  
14           er and major swap participant shall conform with  
15           standards, as may be prescribed by the Commission  
16           by rule or regulation, addressing timely and accurate  
17           confirmation, processing, netting, documentation,  
18           and valuation of all swaps.

19           “(2) RULES.—Within 365 days after the date  
20           of the enactment of this section, the Commission, in  
21           consultation with the Securities and Exchange Com-  
22           mission and the appropriate Federal banking agen-  
23           cies, shall adopt rules governing documentation and  
24           back office standards for swap dealers and major  
25           swap participants.

1       “(i) DEALER RESPONSIBILITIES.—Each registered  
2 swap dealer and major swap participant at all times shall  
3 comply with the following requirements:

4           “(1) MONITORING OF TRADING.—The swap  
5 dealer or major swap participant shall monitor its  
6 trading in swaps to prevent violations of applicable  
7 position limits.

8           “(2) DISCLOSURE OF GENERAL INFORMA-  
9 TION.—The swap dealer or major swap participant  
10 shall disclose to the Commission or to the Prudential  
11 Regulator for the swap dealer or major swap partici-  
12 pant, as applicable, information concerning—

13               “(A) terms and conditions of its swaps;

14               “(B) swap trading operations, mechanisms,  
15 and practices;

16               “(C) financial integrity protections relating  
17 to swaps; and

18               “(D) other information relevant to its trad-  
19 ing in swaps.

20           “(3) ABILITY TO OBTAIN INFORMATION.—The  
21 swap dealer or major swap participant shall—

22               “(A) establish and enforce internal systems  
23 and procedures to obtain any necessary infor-  
24 mation to perform any of the functions de-  
25 scribed in this section; and

1           “(B) provide the information to the Com-  
2 mission or to the Prudential Regulator for the  
3 swap dealer or major swap participant, as ap-  
4 plicable, upon request.

5           “(4) CONFLICTS OF INTEREST.—The swap  
6 dealer and major swap participant shall implement  
7 conflict-of-interest systems and procedures that—

8           “(A) establish structural and institutional  
9 safeguards to assure that the activities of any  
10 person within the firm relating to research or  
11 analysis of the price or market for any com-  
12 modity are separated by appropriate informa-  
13 tional partitions within the firm from the re-  
14 view, pressure, or oversight of those whose in-  
15 volvement in trading or clearing activities might  
16 potentially bias their judgment or supervision;  
17 and

18           “(B) address such other issues as the  
19 Commission determines appropriate.

20           “(5) ANTITRUST CONSIDERATIONS.—Unless  
21 necessary or appropriate to achieve the purposes of  
22 this Act, the swap dealer or major swap participant  
23 shall avoid—

1                   “(A) adopting any processes or taking any  
2                   actions that result in any unreasonable re-  
3                   straints of trade; or

4                   “(B) imposing any material anticompeti-  
5                   tive burden on trading.”.

6 **SEC. 108. CONFLICTS OF INTEREST.**

7           Section 4d of the Commodity Exchange Act (7 U.S.C.  
8 6d) is amended by—

9                   (1) redesignating subsection (c) as subsection  
10                  (d); and

11                  (2) inserting after subsection (b) the following:

12                  “(c) CONFLICTS OF INTEREST.—The Commission  
13 shall require that futures commission merchants and in-  
14 troducing brokers implement conflict-of-interest systems  
15 and procedures that—

16                   “(1) establish structural and institutional safe-  
17                   guards to assure that the activities of any person  
18                   within the firm relating to research or analysis of  
19                   the price or market for any commodity are separated  
20                   by appropriate informational partitions within the  
21                   firm from the review, pressure, or oversight of those  
22                   whose involvement in trading or clearing activities  
23                   might potentially bias their judgment or supervision;  
24                   and

1           “(2) address such other issues as the Commis-  
2           sion determines appropriate.”.

3   **SEC. 109. ALTERNATIVE SWAP EXECUTION FACILITIES.**

4           The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
5   is amended by inserting after section 5g the following:

6   **“SEC. 5h. ALTERNATIVE SWAP EXECUTION FACILITIES.**

7           “(a) REGISTRATION.—A person may not operate a  
8   facility for the trading of swaps unless the facility is reg-  
9   istered with the Commission as an alternative swap execu-  
10   tion facility under this section.

11          “(b) REQUIREMENTS FOR TRADING.—

12                 “(1) An alternative swap execution facility that  
13   is registered under subsection (a) may list for trad-  
14   ing any swap.

15                 “(2) RULES FOR TRADING THROUGH THE FA-  
16   CILITY.—Not later than 180 days after the date of  
17   enactment of the [Over-the-Counter Derivatives  
18   Markets Act of 2009], the Commission shall adopt  
19   rules to allow a swap to be traded through the facili-  
20   ties of a designated contract market or an alter-  
21   native swap execution facility. Such rules shall per-  
22   mit an intermediary, acting as principal or agent, to  
23   enter into or execute a swap, notwithstanding sec-  
24   tion 2(k), if the swap is reported, recorded, or con-  
25   firmed in accordance with the rules of the des-

1       ignated contract market or alternative swap execu-  
2       tion facility.

3       “(c) TRADING BY CONTRACT MARKETS.—A board of  
4 trade that operates a contract market shall, to the extent  
5 that the board of trade also operates an alternative swap  
6 execution facility and uses the same electronic trade execu-  
7 tion system for trading on the contract market and the  
8 alternative swap execution facility, identify whether the  
9 electronic trading is taking place on the contract market  
10 or the alternative swap execution facility.

11       “(d) CORE PRINCIPLES FOR ALTERNATIVE SWAP  
12 EXECUTION FACILITIES.—

13               “(1) IN GENERAL.—To be registered as, and to  
14 maintain its registration as, an alternative swap exe-  
15 cution facility, the facility shall comply with the core  
16 principles specified in this subsection and any re-  
17 quirement that the Commission may impose by rule  
18 or regulation pursuant to section 8a(5). Except  
19 where the Commission determines otherwise by rule  
20 or regulation, the facility shall have reasonable dis-  
21 cretion in establishing the manner in which it com-  
22 plies with these core principles.

23               “(2) COMPLIANCE WITH RULES.—The alter-  
24 native swap execution facility shall—



1           “(A) monitor and enforce compliance with  
2           any of the rules of the facility, including the  
3           terms and conditions of the swaps traded on or  
4           through the facility and any limitations on ac-  
5           cess to the facility; and

6           “(B) establish and enforce trading and  
7           participation rules that will deter abuses and  
8           have the capacity to detect, investigate, and en-  
9           force those rules, including means to—

10           “(i) provide market participants with  
11           impartial access to the market; and

12           “(ii) capture information that may be  
13           used in establishing whether rule violations  
14           have occurred.

15           “(3) SWAPS NOT READILY SUSCEPTIBLE TO MA-  
16           NIPULATION.—The alternative swap execution facil-  
17           ity shall permit trading only in swaps that are not  
18           readily susceptible to manipulation.

19           “(4) MONITORING OF TRADING.—The alter-  
20           native swap execution facility shall—

21           “(A) establish and enforce rules or terms  
22           and conditions defining, or specifications detail-  
23           ing, trading procedures to be used in entering  
24           and executing orders traded on or through its  
25           facilities; and

1           “(B) monitor trading in swaps to prevent  
2           manipulation, price distortion, and disruptions  
3           of the delivery or cash settlement process  
4           through surveillance, compliance, and discipli-  
5           nary practices and procedures, including meth-  
6           ods for conducting real-time monitoring of trad-  
7           ing and comprehensive and accurate trade re-  
8           constructions.

9           “(5) ABILITY TO OBTAIN INFORMATION.—The  
10          alternative swap execution facility shall—

11           “(A) establish and enforce rules that will  
12           allow the facility to obtain any necessary infor-  
13           mation to perform any of the functions de-  
14           scribed in this section;

15           “(B) provide the information to the Com-  
16           mission upon request; and

17           “(C) have the capacity to carry out such  
18           international information-sharing agreements as  
19           the Commission may require.

20          “(6) POSITION LIMITS OR ACCOUNTABILITY.—

21           “(A) To reduce the potential threat of  
22           market manipulation or congestion, especially  
23           during trading in the delivery month, and to  
24           eliminate or prevent excessive speculation as de-  
25           scribed in section 4a(a), the alternative swap

1 execution facility shall adopt for each of its con-  
2 tracts, where necessary and appropriate, posi-  
3 tion limitations or position accountability for  
4 speculators.

5 “(B) For any contract that is subject to a  
6 position limitation established by the Commis-  
7 sion pursuant to section 4a(a), the alternative  
8 swap execution facility shall set its position lim-  
9 itation at a level no higher than the Commis-  
10 sion limitation.

11 “(7) FINANCIAL INTEGRITY OF TRANS-  
12 ACTIONS.—The alternative swap execution facility  
13 shall establish and enforce rules and procedures for  
14 ensuring the financial integrity of swaps entered on  
15 or through its facilities, including the clearance and  
16 settlement of the swaps pursuant to section 2(j)(1).

17 “(8) EMERGENCY AUTHORITY.—The alternative  
18 swap execution facility shall adopt rules to provide  
19 for the exercise of emergency authority, in consulta-  
20 tion or cooperation with the Commission, where nec-  
21 essary and appropriate, including the authority to  
22 liquidate or transfer open positions in any swap or  
23 to suspend or curtail trading in a swap.

24 “(9) TIMELY PUBLICATION OF TRADING INFOR-  
25 MATION.—The alternative swap execution facility

1 shall make public timely information on price, trad-  
2 ing volume, and other trading data on swaps to the  
3 extent prescribed by the Commission.

4 “(10) RECORDKEEPING AND REPORTING.—The  
5 alternative swap execution facility shall maintain  
6 records of all activities related to the business of the  
7 facility, including a complete audit trail, in a form  
8 and manner acceptable to the Commission for a pe-  
9 riod of 5 years, and report to the Commission all in-  
10 formation determined by the Commission to be nec-  
11 essary or appropriate for the Commission to perform  
12 its responsibilities under this Act in a form and  
13 manner acceptable to the Commission. The Commis-  
14 sion shall adopt data collection and reporting re-  
15 quirements for alternative swap execution facilities  
16 that are comparable to corresponding requirements  
17 for derivatives clearing organizations and swap re-  
18 positories.

19 “(11) ANTITRUST CONSIDERATIONS.—Unless  
20 necessary or appropriate to achieve the purposes of  
21 this Act, the alternative swap execution facility shall  
22 avoid—

23 “(A) adopting any rules or taking any ac-  
24 tions that result in any unreasonable restraints  
25 of trade; or

1           “(B) imposing any material anticompeti-  
2           tive burden on trading on the swap execution  
3           facility.

4           “(12) CONFLICTS OF INTEREST.—The alter-  
5           native swap execution facility shall—

6           “(A) establish and enforce rules to mini-  
7           mize conflicts of interest in its decision-making  
8           process; and

9           “(B) establish a process for resolving the  
10          conflicts of interest.

11          “(13) FINANCIAL RESOURCES.—

12          “(A) The alternative swap execution facil-  
13          ity shall have adequate financial, operational,  
14          and managerial resources to discharge its re-  
15          sponsibilities.

16          “(B) The financial resources of the alter-  
17          native swap execution facility shall be consid-  
18          ered adequate if their value exceeds the total  
19          amount that would enable the facility to cover  
20          its operating costs for a period of 1 year, cal-  
21          culated on a rolling basis.

22          “(14) SYSTEM SAFEGUARDS.—The alternative  
23          swap execution facility shall—

24          “(A) establish and maintain a program of  
25          risk analysis and oversight to identify and mini-

1           mize sources of operational risk, through the  
2           development of appropriate controls and proce-  
3           dures, and the development of automated sys-  
4           tems, that are reliable, secure, and have ade-  
5           quate scalable capacity;

6           “(B) establish and maintain emergency  
7           procedures, backup facilities, and a plan for dis-  
8           aster recovery that allow for the timely recovery  
9           and resumption of operations and the fulfill-  
10          ment of the alternative swap execution facility’s  
11          responsibilities and obligation; and

12          “(C) periodically conduct tests to verify  
13          that backup resources are sufficient to ensure  
14          continued order processing and trade matching,  
15          price reporting, market surveillance, and main-  
16          tenance of a comprehensive and accurate audit  
17          trail.

18          “(15) DESIGNATION OF COMPLIANCE OFFI-  
19          CER.—

20                 “(A) IN GENERAL.—Each alternative swap  
21                 execution facility shall designate an individual  
22                 to serve as a compliance officer.

23                 “(B) DUTIES.—The compliance officer—

24                         “(i) shall report directly to the board  
25                         or to the senior officer of the facility;

1 “(ii) shall—

2 “(I) review compliance with the  
3 core principles in this subsection;

4 “(II) in consultation with the  
5 board of the facility, a body per-  
6 forming a function similar to that of  
7 a board, or the senior officer of the  
8 facility, resolve any conflicts of inter-  
9 est that may arise;

10 “(III) be responsible for admin-  
11 istering the policies and procedures  
12 required to be established pursuant to  
13 this section; and

14 “(IV) ensure compliance with  
15 commodity laws and the rules and  
16 regulations issued thereunder, includ-  
17 ing rules prescribed by the Commis-  
18 sion pursuant to this section; and

19 “(iii) shall establish procedures for re-  
20 mediation of non-compliance issues found  
21 during compliance office reviews,  
22 lookbacks, internal or external audit find-  
23 ings, self-reported errors, or through vali-  
24 dated complaints. The procedures shall es-  
25 tablish the handling, management re-

1                   sponse, remediation, re-testing, and closing  
2                   of non-compliant issues.

3                   “(C) ANNUAL REPORTS REQUIRED.—The  
4                   compliance officer shall annually prepare and  
5                   sign a report on the compliance of the facility  
6                   with the commodity laws and its policies and  
7                   procedures, including its code of ethics and con-  
8                   flict of interest policies, in accordance with  
9                   rules prescribed by the Commission. The com-  
10                  pliance report shall accompany the financial re-  
11                  ports of the facility that are required to be fur-  
12                  nished to the Commission pursuant to this sec-  
13                  tion and shall include a certification that, under  
14                  penalty of law, the report is accurate and com-  
15                  plete.

16               “(e) EXEMPTIONS.—The Commission may exempt,  
17               conditionally or unconditionally, an alternative swap exe-  
18               cution facility from registration under this section if the  
19               Commission finds that the facility is subject to com-  
20               parable, comprehensive supervision and regulation on a  
21               consolidated basis by the Securities and Exchange Com-  
22               mission, a Prudential Regulator or the appropriate gov-  
23               ernmental authorities in the organization’s home country.

24               “(f) RULES.—Within 180 days after the date of the  
25               enactment of this section, the Commission shall prescribe



1 rules governing the regulation of alternative swap execu-  
2 tion facilities under this section.”.

3 **SEC. 110. DERIVATIVES TRANSACTION EXECUTION FACILI-**  
4 **TIES AND EXEMPT BOARDS OF TRADE.**

5 Sections 5a and 5d of the Commodity Exchange Act  
6 (7 U.S.C. 1 et seq.) are repealed.

7 **SEC. 111. DESIGNATED CONTRACT MARKETS.**

8 (a) Section 5(d) of the Commodity Exchange Act (7  
9 U.S.C. 7(d)) is amended by striking paragraph (9) and  
10 inserting the following:

11 “(9) EXECUTION OF TRANSACTIONS.—

12 “(A) The board of trade shall provide a  
13 competitive, open, and efficient market and  
14 mechanism for executing transactions that pro-  
15 tects the price discovery process of trading in  
16 the board of trade’s centralized market.

17 “(B) The rules may authorize, for bona  
18 fide business purposes—

19 “(i) transfer trades or office trades;

20 “(ii) an exchange of—

21 “(I) futures in connection with a  
22 cash commodity transaction;

23 “(II) futures for cash commod-  
24 ities; or

25 “(III) futures for swaps; or

1                   “(iii) A futures commission merchant,  
2                   acting as principal or agent, to enter into  
3                   or confirm the execution of a contract for  
4                   the purchase or sale of a commodity for fu-  
5                   ture delivery if the contract is reported, re-  
6                   corded, or cleared in accordance with the  
7                   rules of the contract market or a deriva-  
8                   tives clearing organization.”.

9           (b) Section 5(d) of such Act (7 U.S.C. 7(d)) is  
10 amended by adding at the end the following:

11                   “(19) FINANCIAL RESOURCES.—The board of  
12                   trade shall demonstrate that it has adequate finan-  
13                   cial, operational, and managerial resources to dis-  
14                   charge the responsibilities of a contract market. For  
15                   the financial resources of a board of trade to be con-  
16                   sidered adequate, their value shall exceed the total  
17                   amount that would enable the contract market to  
18                   cover its operating costs for a period of 1 year, cal-  
19                   culated on a rolling basis.

20                   “(20) SYSTEM SAFEGUARDS.—The board of  
21                   trade shall—

22                           “(A) establish and maintain a program of  
23                           risk analysis and oversight to identify and mini-  
24                           mize sources of operational risk through the de-  
25                           velopment of appropriate controls and proce-

1           dures, and the development of automated sys-  
2           tems, that are reliable, secure, and give ade-  
3           quate scalable capacity;

4                 “(B) establish and maintain emergency  
5           procedures, backup facilities, and a plan for dis-  
6           aster recovery that allow for the timely recovery  
7           and resumption of operations and the fulfill-  
8           ment of the board of trade’s responsibilities and  
9           obligations; and

10                “(C) periodically conduct tests to verify  
11           that back-up resources are sufficient to ensure  
12           continued order processing and trade matching,  
13           price reporting, market surveillance, and main-  
14           tenance of a comprehensive and accurate audit  
15           trail.

16                “(21) DIVERSITY OF BOARDS OF DIRECTORS.—  
17           The board of trade, if a publicly traded company,  
18           shall endeavor to recruit individuals to serve on the  
19           board of directors and the other decision-making  
20           bodies (as determined by the Commission) of the  
21           board of trade from among, and to have the com-  
22           position of the bodies reflect, a broad and culturally  
23           diverse pool of qualified candidates.”.

1   **SEC. 112. MARGIN.**

2           Section 8a(7)(C) of the Commodity Exchange Act (7  
3   U.S.C. 12a(7)(C)) is amended by striking “, excepting the  
4   setting of levels of margin”.

5   **SEC. 113. POSITION LIMITS.**

6           (a) Section 4a(a) of the Commodity Exchange Act (7  
7   U.S.C. 6a(a)) is amended by—

8               (1) inserting “(1)” after “(a),”;

9               (2) striking “on electronic trading facilities with  
10   respect to a significant price discovery contract” in  
11   the first sentence and inserting “swaps that perform  
12   or affect a significant price discovery function with  
13   respect to regulated markets”;

14              (3) inserting “, including any group or class of  
15   traders,” in the second sentence after “held by any  
16   person”;

17              (4) striking “on an electronic trading facility  
18   with respect to a significant price discovery con-  
19   tract,” in the second sentence and inserting “swaps  
20   that perform or affect a significant price discovery  
21   function with respect to regulated markets,”; and

22              (5) inserting at the end the following:

23                   “(2)(A) In accordance with the standards set  
24   forth in paragraph (1) of this subsection and con-  
25   sistent with the good faith exception cited in sub-  
26   section (b)(2), with respect to physical commodities

1 other than excluded commodities as defined by the  
2 Commission, the Commission shall by rule, regula-  
3 tion, or order establish limits on the amount of posi-  
4 tions, as appropriate, other than bona fide hedge po-  
5 sitions, that may be held by any person with respect  
6 to contracts of sale for future delivery or with re-  
7 spect to options on the contracts or commodities  
8 traded on or subject to the rules of a designated  
9 contract market.

10 “(B)(i) For exempt commodities, the limits  
11 shall be established within 180 days after the date  
12 of the enactment of this paragraph.

13 “(ii) For agricultural commodities, the limits  
14 shall be established within 270 days after the date  
15 of the enactment of this paragraph.

16 “(3) In establishing the limits required in para-  
17 graph (2), the Commission, as appropriate, shall set  
18 limits—

19 “(A) on the number of positions that may  
20 be held by any person for the spot month, each  
21 other month, and the aggregate number of posi-  
22 tions that may be held by any person for all  
23 months; and

24 “(B) to the maximum extent practicable,  
25 in its discretion—

1 “(i) to diminish, eliminate, or prevent  
2 excessive speculation as described under  
3 this section;

4 “(ii) to deter and prevent market ma-  
5 nipulation, squeezes, and corners;

6 “(iii) to ensure sufficient market li-  
7 quidity for bona fide hedgers; and

8 “(iv) to ensure that the price dis-  
9 covery function of the underlying market is  
10 not disrupted.

11 “(4)(A) Not later than 150 days after the es-  
12 tablishment of position limits pursuant to paragraph  
13 (2), and biannually thereafter, the Commission shall  
14 hold 2 public hearings, 1 for agriculture commodities  
15 and 1 for energy commodities as such terms are de-  
16 fined by the Commission, in order to receive rec-  
17 ommendations regarding the position limits to be es-  
18 tablished in paragraph (2).

19 “(B) Each public hearing held pursuant to sub-  
20 paragraph (A) shall, at a minimum providing there  
21 is sufficient interest, receive recommendations  
22 from—

23 “(i) 7 predominantly commercial short  
24 hedgers of the actual physical commodity for  
25 future delivery;

1           “(ii) 7 predominantly commercial long  
2 hedgers of the actual physical commodity for  
3 future delivery;

4           “(iii) 4 non-commercial participants in  
5 markets for commodities for future delivery;  
6 and

7           “(iv) each designated contract market  
8 upon which a contract in the commodity for fu-  
9 ture delivery is traded.

10          “(C) Within 60 days after each public hearing  
11 held pursuant to subparagraph (A), the Commission  
12 shall publish in the Federal Register its response to  
13 the recommendations regarding position limits heard  
14 at the hearing.

15          “(5) SIGNIFICANT PRICE DISCOVERY FUNC-  
16 TION.—In making a determination whether a swap  
17 performs or affects a significant price discovery  
18 function with respect to regulated markets, the Com-  
19 mission shall consider, as appropriate:

20           “(A) PRICE LINKAGE.—The extent to  
21 which the swap uses or otherwise relies on a  
22 daily or final settlement price, or other major  
23 price parameter, of another contract traded on  
24 a regulated market based upon the same under-  
25 lying commodity, to value a position, transfer or

1 convert a position, financially settle a position,  
2 or close out a position;

3 “(B) ARBITRAGE.—The extent to which  
4 the price for the swap is sufficiently related to  
5 the price of another contract traded on a regu-  
6 lated market based upon the same underlying  
7 commodity so as to permit market participants  
8 to effectively arbitrage between the markets by  
9 simultaneously maintaining positions or exe-  
10 cuting trades in the swaps on a frequent and  
11 recurring basis;

12 “(C) MATERIAL PRICE REFERENCE.—The  
13 extent to which, on a frequent and recurring  
14 basis, bids, offers, or transactions in a contract  
15 traded on a regulated market are directly based  
16 on, or are determined by referencing, the price  
17 generated by the swap;

18 “(D) MATERIAL LIQUIDITY.—The extent  
19 to which the volume of swaps being traded in  
20 the commodity is sufficient to have a material  
21 effect on another contract traded on a regulated  
22 market; and

23 “(E) OTHER MATERIAL FACTORS.—Such  
24 other material factors as the Commission speci-  
25 fies by rule or regulation as relevant to deter-



1 mine whether a swap serves a significant price  
2 discovery function with respect to a regulated  
3 market.

4 “(6) AGGREGATE POSITION LIMITS.—The Com-  
5 mission may, by rule or regulation, establish limits  
6 (including related hedge exemption provisions) on  
7 the aggregate number or amount of positions in con-  
8 tracts based upon the same underlying commodity  
9 (as defined by the Commission) that may be held by  
10 any person, including any group or class of traders,  
11 for each month across—

12 “(A) contracts listed by designated con-  
13 tract markets;

14 “(B) with respect to an agreement con-  
15 tract, or transaction that settles against any  
16 price (including the daily or final settlement  
17 price) of 1 or more contracts listed for trading  
18 on a registered entity, contracts traded on a  
19 foreign board of trade that provides members or  
20 other participants located in the United States  
21 with direct access to its electronic trading and  
22 order matching system; and

23 “(C) swap contracts that perform or affect  
24 a significant price discovery function with re-  
25 spect to regulated markets.

1           “(7) EXEMPTIONS.—The Commission, by rule,  
2           regulation, or order, may exempt, conditionally or  
3           unconditionally, any person or class of persons, any  
4           swap or class of swaps, or any transaction or class  
5           of transactions from any requirement it may estab-  
6           lish under this section with respect to position lim-  
7           its.”.

8           (b) Section 4a(b) of such Act (7 U.S.C. 6a(b)) is  
9           amended—

10           (1) in paragraph (1), by striking “or derivatives  
11           transaction execution facility or facilities or elec-  
12           tronic trading facility” and inserting “or alternative  
13           swap execution facility or facilities”; and

14           (2) in paragraph (2), by striking “or derivatives  
15           transaction execution facility or facilities or elec-  
16           tronic trading facility” and inserting “or alternative  
17           swap execution facility”.

18           (c) Section 4a(c) of such Act is amended—

19           (1) by inserting “(1)” after “(c)”; and

20           (2) by adding after and below the end the fol-  
21           lowing:

22           “(2) For the purposes of implementation of  
23           subsection (a)(2) for contracts of sale for future de-  
24           livery or options on the contracts or commodities,  
25           the Commission shall define what constitutes a bona

1       fide hedging transaction or position as a transaction  
2       or position that—

3               “(A)(i) represents a substitute for trans-  
4               actions made or to be made or positions taken  
5               or to be taken at a later time in a physical mar-  
6               keting channel;

7               “(ii) is economically appropriate to the re-  
8               duction of risks in the conduct and manage-  
9               ment of a commercial enterprise; and

10              “(iii) arises from the potential change in  
11              the value of—

12                      “(I) assets that a person owns, pro-  
13                      duces, manufactures, processes, or mer-  
14                      chandises or anticipates owning, producing,  
15                      manufacturing, processing, or merchan-  
16                      dising;

17                      “(II) liabilities that a person owns or  
18                      anticipates incurring; or

19                      “(III) services that a person provides,  
20                      purchases, or anticipates providing or pur-  
21                      chasing; or

22              “(B) reduces risks attendant to a position  
23              resulting from a swap that—

24                      “(i) was executed opposite a  
25                      counterparty for which the transaction

1                   would qualify as a bona fide hedging trans-  
2                   action pursuant to subparagraph (A); or  
3                   “(ii) meets the requirements of sub-  
4                   paragraph (A).”.

5           (d) Section 5(d)(5) of such Act (7 U.S.C. 7(d)(5))  
6 is amended to read as follows:

7                   “(5) To reduce the potential threat of market  
8                   manipulation or congestion, especially during trading  
9                   in the delivery month, the board of trade shall adopt  
10                  for each of its contracts, where necessary and appro-  
11                  priate, position limitations or position accountability  
12                  standards for speculators. For any contract that is  
13                  subject to a position limitation established by the  
14                  Commission pursuant to section 4a(a), the board of  
15                  trade shall set its position limitation at a level no  
16                  higher than the Commission-established limitation.”.

17 **SEC. 114. ENHANCED AUTHORITY OVER REGISTERED ENTI-**  
18 **TIES.**

19           (a) Section 5(d)(1) of the Commodity Exchange Act  
20 (7 U.S.C. 7(d)(1)) is amended by striking “The board of  
21 trade shall have” and inserting “Except where the Com-  
22 mission otherwise determines by rule or regulation pursu-  
23 ant to section 8a(5), the board of trade shall have”.

24           (b) Section 5b(c)(2)(A) of such Act (7 U.S.C. 7a-  
25 1(c)(2)(A)) is amended by striking “The applicant shall

1 have” and inserting “Except where the Commission other-  
2 wise determines by rule or regulation pursuant to section  
3 8a(5), the applicant shall have”.

4 (c) Section 5c(a) of such Act (7 U.S.C. 7a-2(a)) is  
5 amended—

6 (1) in paragraph (1), by striking “5a(d) and  
7 5b(c)(2)” and inserting “5b(c)(2) and 5h(e)”; and

8 (2) in paragraph (2), by striking “shall not”  
9 and inserting “may”.

10 (d) Section 5c(c)(1) of such Act (7 U.S.C. 7a-2(c)(1))  
11 is amended—

12 (1) by inserting “(A)” after “IN GENERAL.—”;  
13 and

14 (2) by adding at the end the following:

15 “(B) Unless section 805(e) of the Payment,  
16 Clearing, and Settlement Supervision Act of 2009  
17 applies, the new rule or rule amendment shall be-  
18 come effective, pursuant to the registered entity’s  
19 certification, 10 business days after the Commis-  
20 sion’s receipt of the certification (or such shorter pe-  
21 riod determined by the Commission by rule or regu-  
22 lation) unless the Commission notifies the registered  
23 entity within such time that it is staying the certifi-  
24 cation because there exist novel or complex issues  
25 that require additional time to analyze, an inad-

1       equate explanation by the submitting registered enti-  
2       ty, or a potential inconsistency with this Act (includ-  
3       ing regulations under this Act).

4               “(C) A notification by the Commission pursu-  
5       ant to subparagraph (B) shall stay the certification  
6       of the new contract or instrument or clearing of the  
7       new contract or instrument, new rule or new amend-  
8       ment for up to an additional 90 days from the date  
9       of the notification.”.

10       (e) Section 5c(d) of such Act (7 U.S.C. 7a-2(d)) is  
11       repealed.

12       **SEC. 115. FOREIGN BOARDS OF TRADE.**

13       (a) IN GENERAL.—Section 4 of the Commodity Ex-  
14       change Act (7 U.S.C. 6) is amended by adding at the end  
15       the following:

16       “(e) FOREIGN BOARDS OF TRADE.—

17               “(1) IN GENERAL.—The Commission may not  
18       permit a foreign board of trade to provide to the  
19       members of the foreign board of trade or other par-  
20       ticipants located in the United States direct access  
21       to the electronic trading and order-matching system  
22       of the foreign board of trade with respect to an  
23       agreement, contract, or transaction that settles  
24       against any price (including the daily or final settle-  
25       ment price) of 1 or more contracts listed for trading

1 on a registered entity, unless the Commission deter-  
2 mines that—

3 “(A) the foreign board of trade makes pub-  
4 lic daily trading information regarding the  
5 agreement, contract, or transaction that is com-  
6 parable to the daily trading information pub-  
7 lished by the registered entity for the 1 or more  
8 contracts against which the agreement, con-  
9 tract, or transaction traded on the foreign  
10 board of trade settles; and

11 “(B) the foreign board of trade (or the for-  
12 eign futures authority that oversees the foreign  
13 board of trade)—

14 “(i) adopts position limits (including  
15 related hedge exemption provisions) for the  
16 agreement, contract, or transaction that  
17 are comparable, taking into consideration  
18 the relative sizes of the respective markets,  
19 to the position limits (including related  
20 hedge exemption provisions) adopted by  
21 the registered entity for the 1 or more con-  
22 tracts against which the agreement, con-  
23 tract, or transaction traded on the foreign  
24 board of trade settles;

1           “(ii) has the authority to require or  
2           direct market participants to limit, reduce,  
3           or liquidate any position the foreign board  
4           of trade (or the foreign futures authority  
5           that oversees the foreign board of trade)  
6           determines to be necessary to prevent or  
7           reduce the threat of price manipulation,  
8           excessive speculation as described in sec-  
9           tion 4a, price distortion, or disruption of  
10          delivery or the cash settlement process;

11          “(iii) agrees to promptly notify the  
12          Commission, with regard to the agreement,  
13          contract, or transaction that settles against  
14          any price (including the daily or final set-  
15          tlement price) of 1 or more contracts listed  
16          for trading on a registered entity, of any  
17          change regarding—

18               “(I) the information that the for-  
19               eign board of trade will make publicly  
20               available;

21               “(II) the position limits that the  
22               foreign board of trade or foreign fu-  
23               tures authority will adopt and enforce;

24               “(III) the position reductions re-  
25               quired to prevent manipulation, exces-



1           sive speculation as described in sec-  
2           tion 4a, price distortion, or disruption  
3           of delivery or the cash settlement  
4           process; and

5                   “(IV) any other area of interest  
6           expressed by the Commission to the  
7           foreign board of trade or foreign fu-  
8           tures authority;

9                   “(iv) provides information to the  
10          Commission regarding large trader posi-  
11          tions in the agreement, contract, or trans-  
12          action that is comparable to the large trad-  
13          er position information collected by the  
14          Commission for the 1 or more contracts  
15          against which the agreement, contract, or  
16          transaction traded on the foreign board of  
17          trade settles; and

18                   “(v) provides the Commission with in-  
19          formation necessary to publish reports on  
20          aggregate trader positions for the agree-  
21          ment, contract, or transaction traded on  
22          the foreign board of trade that are com-  
23          parable to the reports on aggregate trader  
24          positions for the 1 or more contracts  
25          against which the agreement, contract, or

1 transaction traded on the foreign board of  
2 trade settles.

3 “(2) EXISTING FOREIGN BOARDS OF TRADE.—  
4 Paragraph (1) shall not be effective with respect to  
5 any foreign board of trade to which the Commission  
6 has granted direct access permission before the date  
7 of the enactment of this subsection until the date  
8 that is 180 days after such date of enactment.

9 “(3) PERSONS LOCATED IN THE UNITED  
10 STATES.—”.

11 (b) LIABILITY OF REGISTERED PERSONS TRADING  
12 ON A FOREIGN BOARD OF TRADE.—

13 (1) Section 4(a) of such Act (7. U.S.C. 6(a)) is  
14 amended by inserting “or by subsection (f)” after  
15 “Unless exempted by the Commission pursuant to  
16 subsection (c)”; and

17 (2) Section 4 of such Act (7 U.S.C 6) is further  
18 amended by adding at the end the following:

19 “(f)(1) A person registered with the Commission, or  
20 exempt from registration by the Commission, under this  
21 Act may not be found to have violated subsection (a) with  
22 respect to a transaction in, or in connection with, a con-  
23 tract of sale of a commodity for future delivery if the per-  
24 son—

1           “(A) has reason to believe that the transaction  
2           and the contract is made on or subject to the rules  
3           of a foreign board of trade that is—

4                   “(i) legally organized under the laws of a  
5           foreign country;

6                   “(ii) authorized to act as a board of trade  
7           by a foreign futures authority; and

8                   “(iii) subject to regulation by the foreign  
9           futures authority; and

10           “(B) has not been determined by the Commis-  
11           sion to be operating in violation of subsection (a).

12           “(2) Nothing in this subsection shall be construed as  
13           implying or creating any presumption that a board of  
14           trade, exchange, or market is located outside the United  
15           States, or its territories or possessions, for purposes of  
16           subsection (a).”.

17           (c) CONTRACT ENFORCEMENT FOR FOREIGN FU-  
18           TURES CONTRACTS.—Section 22(a) of such Act (7 U.S.C.  
19           25(a)) is amended by adding at the end the following:

20                   “(5) CONTRACT ENFORCEMENT FOR FOREIGN  
21           FUTURES CONTRACTS.—A contract of sale of a com-  
22           modity for future delivery traded or executed on or  
23           through the facilities of a board of trade, exchange,  
24           or market located outside the United States for pur-  
25           poses of section 4(a) shall not be void, voidable, or

1       unenforceable, and a party to such a contract shall  
2       not be entitled to rescind or recover any payment  
3       made with respect to the contract, based on the fail-  
4       ure of the foreign board of trade to comply with any  
5       provision of this Act.”.

6   **SEC. 116. LEGAL CERTAINTY FOR SWAPS.**

7       Section 22(a)(4) of the Commodity Exchange Act (7  
8   U.S.C. 25(a)(4)) is amended to read as follows:

9           “(4) CONTRACT ENFORCEMENT BETWEEN ELI-  
10       GIBLE COUNTERPARTIES.—

11           “(A) A hybrid instrument sold to any in-  
12       vestor shall not be void, voidable, or unenforce-  
13       able, and party to such a hybrid instrument  
14       shall not be entitled to rescind, or recover any  
15       payment made with respect to, such a hybrid  
16       instrument under this section or any other pro-  
17       vision of Federal or State law, based solely on  
18       the failure of the hybrid instrument to comply  
19       with the terms or conditions of section 2(f) or  
20       regulations of the Commission; and

21           “(B) An agreement, contract, or trans-  
22       action between eligible contract participants or  
23       persons reasonably believed to be eligible con-  
24       tract participants shall not be void, voidable, or  
25       unenforceable, and a party thereto shall not be

1 entitled to rescind, or recover any payment  
2 made with respect to, such an agreement, con-  
3 tract, or transaction under this section or any  
4 other provision of Federal or State law, based  
5 solely on the failure of the agreement, contract,  
6 or transaction to meet the definition of a swap  
7 set forth in section 1a or to be cleared pursuant  
8 to section 2(j)(1).”.

9 **SEC. 117. FDICIA AMENDMENTS.**

10 Sections 408 and 409 of the Federal Deposit Insur-  
11 ance Corporation Improvement Act of 1991 (12 U.S.C.  
12 4421 and 4422) are repealed.

13 **SEC. 118. ENFORCEMENT AUTHORITY.**

14 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
15 is amended by inserting after section 4b the following:

16 **“SEC. 4b-1. PRIMARY ENFORCEMENT AUTHORITY.**

17 “(a) CFTC.—Except as provided in subsection (b),  
18 the Commission shall have exclusive authority to enforce  
19 the provisions of title I of the Over-the-Counter Deriva-  
20 tives Markets Act of 2009 with respect to any person.

21 “(b) PRUDENTIAL REGULATORS.—The Prudential  
22 Regulators shall have exclusive authority to enforce the  
23 provisions of section 4s(e) and other prudential require-  
24 ments of this Act with respect to banks, and branches or

1 agencies of foreign banks that are swap dealers or major  
2 swap participants.

3       “(c) REFERRAL.—(1) If the Prudential Regulator for  
4 a swap dealer or major swap participant has cause to be-  
5 lieve that the swap dealer or major swap participant may  
6 have engaged in conduct that constitutes a violation of the  
7 nonprudential requirements of section 4s or rules adopted  
8 by the Commission thereunder, that Prudential Regulator  
9 may recommend in writing to the Commission that the  
10 Commission initiate an enforcement proceeding as author-  
11 ized under this Act. The recommendation shall be accom-  
12 panied by a written explanation of the concerns giving rise  
13 to the recommendation.

14       “(2) If the Commission has cause to believe that a  
15 swap dealer or major swap participant that has a Pruden-  
16 tial Regulator may have engaged in conduct that con-  
17 stitute a violation of the prudential requirements of sec-  
18 tion 4s or rules adopted thereunder, the Commission may  
19 recommend in writing to the Prudential Regulator that  
20 the Prudential Regulator initiate an enforcement pro-  
21 ceeding as authorized under this Act. The recommenda-  
22 tion shall be accompanied by a written explanation of the  
23 concerns given rise to the recommendation.”.

1 **SEC. 119. ENFORCEMENT.**

2 (a) Section 4b(a)(2) of the Commodity Exchange Act  
3 (7 U.S.C. 6b(a)(2)) is amended by striking “or other  
4 agreement, contract, or transaction subject to paragraphs  
5 (1) and (2) of section 5a(g),” and inserting “or swap,”.

6 (b) Section 4b(b) of such Act (7 U.S.C. 6b(b)) is  
7 amended by striking “or other agreement, contract or  
8 transaction subject to paragraphs (1) and (2) of section  
9 5a(g),” and inserting “or swap,”.

10 (c) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is  
11 amended by inserting “or swap” before “if the transaction  
12 is used or may be used”.

13 (d) Section 9(a)(2) of such Act (7 U.S.C. 13(a)(2))  
14 is amended by inserting “or of any swap,” before “or to  
15 corner”.

16 (e) Section 9(a)(4) of such Act (7 U.S.C. 13(a)(4))  
17 is amended by inserting “swap repository,” before “or fu-  
18 tures association”.

19 (f) Section 9(e)(1) of such Act (7 U.S.C. 13(e)(1))  
20 is amended by inserting “swap repository,” before “or reg-  
21 istered futures association” and by inserting “, or swaps,”  
22 before “on the basis”.

23 (g) Section 8(b) of the Federal Deposit Insurance Act  
24 (12 U.S.C. 1818(b)) is amended by redesignating para-  
25 graphs (6) through (10) as paragraphs (7) through (11),

1 respectively, and inserting after paragraph (5) the fol-  
2 lowing:

3           “(6) This section shall apply to any swap deal-  
4 er, major swap participant, security-based swap  
5 dealer, major security-based swap participant, de-  
6 rivatives clearing organization, swap repository or al-  
7 ternative swap execution facility, whether or not it  
8 is an insured depository institution, for which the  
9 Board, the Corporation, or the Office of the Comp-  
10 troller of the Currency is the appropriate Federal  
11 banking agency or Prudential Regulator for pur-  
12 poses of the Over-the-Counter Derivatives Markets  
13 Act of 2009.”.

14 **SEC. 120. RETAIL COMMODITY TRANSACTIONS.**

15       Section 2(c) of the Commodity Exchange Act (7  
16 U.S.C. 2(c)) is amended—

17           (1) in paragraph (1), by striking “(other than  
18 section 5a (to the extent provided in section 5a(g)),  
19 5b, 5d, or 12(e)(2)(B))” and inserting “(other than  
20 section 5b or 12(e)(2)(B))”; and

21           (2) in paragraph (2), by inserting after sub-  
22 paragraph (C) the following:

23           “(D)     RETAIL     COMMODITY     TRANS-  
24                    ACTIONS.—



1           “(i) This subparagraph shall apply to,  
2           and the Commission shall have jurisdiction  
3           over, any agreement, contract, or trans-  
4           action in any commodity that is—

5                   “(I) entered into with, or offered  
6                   to (even if not entered into with), a  
7                   person that is not an eligible contract  
8                   participant or eligible commercial en-  
9                   tity; and

10                   “(II) entered into, or offered  
11                   (even if not entered into), on a lever-  
12                   aged or margined basis, or financed  
13                   by the offeror, the counterparty, or a  
14                   person acting in concert with the of-  
15                   feror or counterparty on a similar  
16                   basis.

17           “(ii) Clause (i) shall not apply to—

18                   “(I) an agreement, contract, or  
19                   transaction described in paragraph (1)  
20                   or subparagraphs (A), (B), or (C), in-  
21                   cluding any agreement, contract, or  
22                   transaction specifically excluded from  
23                   subparagraph (A), (B), or (C);

24                   “(II) any security;

25                   “(III) a contract of sale that—

1           “(aa) results in actual deliv-  
2           ery within 28 days or such other  
3           longer period as the Commission  
4           may determine by rule or regula-  
5           tion based upon the typical com-  
6           mercial practice in cash or spot  
7           markets for the commodity in-  
8           volved; or

9           “(bb) creates an enforceable  
10          obligation to deliver between a  
11          seller and a buyer that have the  
12          ability to deliver and accept deliv-  
13          ery, respectively, in connection  
14          with their line of business.

15          “(IV) an agreement, contract, or  
16          transaction that is listed on a national  
17          securities exchange registered under  
18          section 6(a) of the Securities Ex-  
19          change Act of 1934 (15 U.S.C.  
20          78f(a)); or

21          “(V) an identified banking prod-  
22          uct, as defined in section 402(b) of  
23          the Legal Certainty for Bank Prod-  
24          ucts Act of 2000 (7 U.S.C. 27(b)).

1           “(iii) Sections 4(a), 4(b) and 4b shall  
2           apply to any agreement, contract or trans-  
3           action described in clause (i), that is not  
4           excluded from clause (i) by clause (ii), as  
5           if the agreement, contract, or transaction  
6           were a contract of sale of a commodity for  
7           future delivery.

8           “(iv) This subparagraph shall not be  
9           construed to limit any jurisdiction that the  
10          Commission may otherwise have under any  
11          other provision of this Act over an agree-  
12          ment, contract, or transaction that is a  
13          contract of sale of a commodity for future  
14          delivery;

15          “(v) This subparagraph shall not be  
16          construed to limit any jurisdiction that the  
17          Commission or the Securities and Ex-  
18          change Commission may otherwise have  
19          under any other provisions of this Act with  
20          respect to security futures products and  
21          persons effecting transactions in security  
22          futures products;

23          “(vi) For the purposes of this sub-  
24          paragraph, an agricultural producer, pack-  
25          er, or handler shall be considered an eligi-

1                   ble commercial entity for any agreement,  
2                   contract, or transaction for a commodity in  
3                   connection with its line of business.”.

4   **SEC. 121. LARGE SWAP TRADER REPORTING.**

5       The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
6 is amended by inserting after section 4s (as added by sec-  
7 tion 107 of this Act) the following:

8   **“SEC. 4t. LARGE SWAP TRADER REPORTING.**

9       “(a) It shall be unlawful for any person to enter into  
10 any swap that performs or affects a significant price dis-  
11 covery function with respect to regulated markets if—

12               “(1) the person directly or indirectly enters into  
13 such swaps during any 1 day in an amount equal to  
14 or in excess of such amount as shall be fixed from  
15 time to time by the Commission; and

16               “(2) such person directly or indirectly has or  
17 obtains a position in such swaps equal to or in ex-  
18 cess of such amount as shall be fixed from time to  
19 time by the Commission,

20 unless the person files or causes to be filed with the prop-  
21 erly designated officer of the Commission such reports re-  
22 garding any transactions or positions described in para-  
23 graphs (1) and (2) as the Commission may by rule or reg-  
24 ulation require and unless, in accordance with the rules  
25 and regulations of the Commission, the person keeps

1 books and records of all such swaps and any transactions  
2 and positions in any related commodity traded on or sub-  
3 ject to the rules of any board of trade, and of cash or  
4 spot transactions in, inventories of, and purchase and sale  
5 commitments of, such a commodity.

6 “(b) The books and records shall show complete de-  
7 tails concerning all transactions and positions as the Com-  
8 mission may by rule or regulation prescribe.

9 “(c) The books and records shall be open at all times  
10 to inspection and examination by any representative of the  
11 Commission.

12 “(d) For the purpose of this subsection, the swaps,  
13 futures and cash or spot transactions and positions of any  
14 person shall include the transactions and positions of any  
15 persons directly or indirectly controlled by the person.

16 “(e) In making a determination whether a swap per-  
17 forms or affects a significant price discovery function with  
18 respect to regulated markets, the Commission shall con-  
19 sider the factors set forth in section 4a(a)(3).”.

20 **SEC. 122. OTHER AUTHORITY.**

21 Unless otherwise provided by its terms, this title does  
22 not divest any appropriate Federal banking agency, the  
23 Commission, the Securities and Exchange Commission, or  
24 other Federal or State agency, of any authority derived  
25 from any other applicable law.

1   **SEC. 123. ANTITRUST.**

2           Nothing in the amendments made by this title shall  
3 be construed to modify, impair, or supersede the operation  
4 of any of the antitrust laws. For purposes of this title,  
5 the term “antitrust laws” has the same meaning given the  
6 term in subsection (a) of the first section of the Clayton  
7 Act, except that the term includes section 5 of the Federal  
8 Trade Commission Act to the extent that such section 5  
9 applies to unfair methods of competition.

10   **SEC. 124. REVIEW OF PRIOR ACTIONS.**

11           Notwithstanding any other provision of the Com-  
12 modity Exchange Act, the Commodity Futures Trading  
13 Commission shall review, as appropriate, all regulations,  
14 rules, exemptions, exclusions, guidance, no action letters,  
15 orders, other actions taken by or on behalf of the Commis-  
16 sion, and any action taken pursuant to the Commodity  
17 Exchange Act by an exchange, self-regulatory organiza-  
18 tion, or any other registered entity, that are currently in  
19 effect, to ensure that such prior actions are in compliance  
20 with the provisions of this Act.

21   **SEC. 125. EXPEDITED PROCESS.**

22           The Commodity Futures Trading Commission may  
23 use emergency and expedited procedures (including any  
24 administrative or other procedure as appropriate) to carry  
25 out this Act if, in its discretion, it deems it necessary to  
26 do so.

1 **SEC. 126. EFFECTIVE DATE.**

2 This title is effective 180 days after the date of the  
3 enactment of this Act.

4 **TITLE II—REGULATION OF SE-**  
5 **CURITY-BASED SWAP MAR-**  
6 **KETS**

7 **SEC. 201. DEFINITIONS UNDER THE SECURITIES EX-**  
8 **CHANGE ACT OF 1934.**

9 (a) DEFINITIONS.—Section 3(a) of the Securities Ex-  
10 change Act of 1934 (15 U.S.C. 78c(a)) is amended—

11 (1) in paragraph (5)(A) and (B), by inserting  
12 “(but not security-based swaps, other than security-  
13 based swaps with or for persons that are not eligible  
14 contract participants)” after the word “securities”  
15 in each place it appears;

16 (2) in paragraph (10), by inserting “security-  
17 based swap,” after “security future,”;

18 (3) in paragraph (13), by adding at the end the  
19 following: “For security-based swaps, such terms in-  
20 clude the execution, termination (prior to its sched-  
21 uled maturity date), assignment, exchange, or simi-  
22 lar transfer or conveyance of, or extinguishing of  
23 rights or obligations under, a security-based swap,  
24 as the context may require.”;

25 (4) in paragraph (14), by adding at the end the  
26 following: “For security-based swaps, such terms in-

1       clude the execution, termination (prior to its sched-  
2       uled maturity date), assignment, exchange, or simi-  
3       lar transfer or conveyance of, or extinguishing of  
4       rights or obligations under, a security-based swap,  
5       as the context may require.”;

6               (5) in paragraph (39)—

7                       (A) by striking “or government securities  
8                       dealer” and adding “government securities  
9                       dealer, security-based swap dealer or major se-  
10                      curity-based swap participant” in its place in  
11                      subparagraph (B)(i)(I);

12                     (B) by adding “security-based swap dealer,  
13                     major security-based swap participant,” after  
14                     “government securities dealer,” in subpara-  
15                     graph (B)(i)(II);

16                     (C) by striking “or government securities  
17                     dealer” and adding “government securities  
18                     dealer, security-based swap dealer or major se-  
19                     curity-based swap participant” in its place in  
20                     subparagraph (C); and

21                     (D) by adding “security-based swap dealer,  
22                     major security-based swap participant,” after  
23                     “government securities dealer,” in subpara-  
24                     graph (D); and

25               (6) by adding at the end the following:



1           “(65) ELIGIBLE CONTRACT PARTICIPANT.—The  
2           term ‘eligible contract participant’ has the same  
3           meaning as in section 1a(13) of the Commodity Ex-  
4           change Act (7 U.S.C. 1a(13)).

5           “(66) MAJOR SWAP PARTICIPANT.—The term  
6           ‘major swap participant’ has the same meaning as in  
7           section 1a(40) of the Commodity Exchange Act (7  
8           U.S.C. 1a(40)).

9           “(67) MAJOR SECURITY-BASED SWAP PARTICI-  
10          PANT.—

11           “(A) IN GENERAL.—The term ‘major secu-  
12          rity-based swap participant’ means any person  
13          who is not a security-based swap dealer and  
14          who maintains a substantial net position in out-  
15          standing uncleared security-based swaps.

16           “(B) DEFINITION OF ‘SUBSTANTIAL NET  
17          POSITION’.—The Commission shall define by  
18          rule or regulation the term ‘substantial net po-  
19          sition’ at a threshold that the Commission de-  
20          termine prudent for the effective monitoring,  
21          management and oversight of entities which are  
22          systemically important or can significantly im-  
23          pact the financial system.

24          “(68) SECURITY-BASED SWAP.—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B), the term ‘security-based  
3           swap’ means any agreement, contract, or trans-  
4           action that would be a swap under section  
5           1a(35) of the Commodity Exchange Act (with-  
6           out regard to section 1a(35)(B)(xii) of such  
7           Act), and that—

8                   “(i) is primarily based on an index  
9                   that is a narrow-based security index, in-  
10                  cluding any interest therein or based on  
11                  the value thereof;

12                  “(ii) is primarily based on a single se-  
13                  curity or loan, including any interest there-  
14                  in or based on the value thereof; or

15                  “(iii) is primarily based on the occur-  
16                  rence, non-occurrence, or extent of the oc-  
17                  currence of an event relating to a single  
18                  issuer of a security or the issuers of securi-  
19                  ties in a narrow-based security index, pro-  
20                  vided that such event must directly affect  
21                  the financial statements, financial condi-  
22                  tion, or financial obligations of the issuer.

23           “(B) RULE OF CONSTRUCTION REGARDING  
24           MASTER AGREEMENTS.—The term ‘security-  
25           based swap’ shall be construed to include a

1 master agreement that provides for an agree-  
2 ment, contract, or transaction that is a secu-  
3 rity-based swap pursuant to subparagraph (A),  
4 together with all supplements to any such mas-  
5 ter agreement, without regard to whether the  
6 master agreement contains an agreement, con-  
7 tract, or transaction that is not a security-based  
8 swap pursuant to subparagraph (A), except  
9 that the master agreement shall be considered  
10 to be a security-based swap only with respect to  
11 each agreement, contract, or transaction under  
12 the master agreement that is a security-based  
13 swap pursuant to subparagraph (A).

14 “(69) SWAP.—The term ‘swap’ has the same  
15 meaning as in section 1a(35) of the Commodity Ex-  
16 change Act (7 U.S.C. 1a(35)).

17 “(70) PERSON ASSOCIATED WITH A SECURITY-  
18 BASED SWAP DEALER OR MAJOR SECURITY-BASED  
19 SWAP PARTICIPANT.—The term ‘person associated  
20 with a security-based swap dealer or major security-  
21 based swap participant’ or ‘associated person of a  
22 security-based swap dealer or major security-based  
23 swap participant’ means any partner, officer, direc-  
24 tor, or branch manager of such security-based swap  
25 dealer or major security-based swap participant (or

1 any person occupying a similar status or performing  
2 similar functions), any person directly or indirectly  
3 controlling, controlled by, or under common control  
4 with such security-based swap dealer or major secu-  
5 rity-based swap participant, or any employee of such  
6 security-based swap dealer or major security-based  
7 swap participant, except that any person associated  
8 with a security-based swap dealer or major security-  
9 based swap participant whose functions are solely  
10 clerical or ministerial shall not be included in the  
11 meaning of such term other than for purposes of  
12 section 15F(e)(2).

13 “(71) SECURITY-BASED SWAP DEALER.—The  
14 term ‘security-based swap dealer’ means any person  
15 that, as a significant part of its business—

16 “(A) holds itself out as a dealer in secu-  
17 rity-based swaps;

18 “(B) makes a market in security-based  
19 swaps;

20 “(C) regularly engages in the purchase of  
21 security-based swaps and their resale to cus-  
22 tomers in the ordinary course of a business; or

23 “(D) engages in any activity causing it to  
24 be commonly known in the trade as a dealer or  
25 market maker in security-based swaps.

1           “(72) APPROPRIATE FEDERAL BANKING AGEN-  
2           CY.—The term ‘appropriate Federal banking agency’  
3           has the same meaning as in section 3(q) of the Fed-  
4           eral Deposit Insurance Act (12 U.S.C. 1813(q)).

5           “(73) BOARD.—The term ‘Board’ means the  
6           Board of Governors of the Federal Reserve System.

7           “(74) PRUDENTIAL REGULATOR.—The term  
8           ‘Prudential Regulator’ means—

9                   “(A) the Board in the case of a swap deal-  
10                  er, major swap participant, security-based swap  
11                  dealer or major security-based swap participant  
12                  that is—

13                           “(i) a State-chartered bank that is a  
14                           member of the Federal Reserve System; or

15                                   “(ii) a State-chartered branch or  
16                           agency of a foreign bank;

17                   “(B) the Office of the Comptroller of the  
18                  Currency in the case of a swap dealer, major  
19                  swap participant, security-based swap dealer or  
20                  major security-based swap participant that is—

21                           “(i) a national bank; or

22                                   “(ii) a federally chartered branch or  
23                           agency of a foreign bank; and

24                   “(C) the Federal Deposit Insurance Cor-  
25                  poration in the case of a swap dealer, major

1 swap participant, security-based swap dealer or  
2 major security-based swap participant that is a  
3 state-chartered bank that is not a member of  
4 the Federal Reserve System.

5 “(75) SWAP DEALER.—The term ‘swap dealer’  
6 has the same meaning as in section 1a(39) of the  
7 Commodity Exchange Act (7 U.S.C. 1a(39)).

8 “(76) SECURITY-BASED SWAP AGREEMENT.—

9 “(A) IN GENERAL.—For purposes of sec-  
10 tions 10, 16, 20, and 21A of this Act, and sec-  
11 tion 17 of the Securities Act of 1933 (15  
12 U.S.C. 77q), the term ‘security-based swap  
13 agreement’ means a swap agreement as defined  
14 in section 206A of the Gramm-Leach-Bliley Act  
15 (15 U.S.C. 78c note) of which a material term  
16 is based on the price, yield, value, or volatility  
17 of any security or any group or index of securi-  
18 ties, or any interest therein.

19 “(B) EXCLUSIONS.—The term ‘security-  
20 based swap agreement’ does not include any se-  
21 curity-based swap.

22 “(77) SECURITY-BASED SWAP REPOSITORY.—  
23 The term ‘security-based swap repository’ means any  
24 person that collects, calculates, prepares or main-  
25 tains information or records with respect to trans-

1 actions or positions in, or the terms and conditions  
2 of, security-based swaps entered into by third par-  
3 ties.”.

4 (b) **AUTHORITY TO FURTHER DEFINE TERMS.**—The  
5 Securities and Exchange Commission may adopt a rule  
6 further defining the terms “security-based swap”, “secu-  
7 rity-based swap dealer”, “major security-based swap par-  
8 ticipant”, and “eligible contract participant” with regard  
9 to security-based swaps (as such terms are defined in the  
10 amendments made by subsection (a)) for the purpose of  
11 including transactions and entities that have been struc-  
12 tured to evade this Act.

13 **SEC. 202. REPEAL OF PROHIBITION ON REGULATION OF SE-**  
14 **CURITY-BASED SWAPS.**

15 (a) **REPEAL OF LAW.**—Section 206B of the Gramm-  
16 Leach-Bliley Act (15 U.S.C. 78c note) is repealed.

17 (b) **CONFORMING AMENDMENTS TO THE SECURITIES**  
18 **ACT OF 1933.**—

19 (1) Section 2A(b) is amended by striking “(as  
20 defined in section 206B of the Gramm-Leach-Bliley  
21 Act)” each place that such term appears;

22 (2) Section 17 of the Securities Act of 1933 (15  
23 U.S.C. 77q) is amended—

24 (A) in subsection (a)—

1 (i) by inserting “(including security-  
2 based swaps)” after “securities”; and

3 (ii) by striking “206B of the Gramm-  
4 Leach-Bliley Act” and inserting “3(a)(76)  
5 of the Securities Exchange Act of 1934”;  
6 and

7 (B) in subsection (d), by striking “206B of  
8 the Gramm-Leach-Bliley Act” and inserting  
9 “3(a)(76) of the Securities Exchange Act of  
10 1934”.

11 (c) CONFORMING AMENDMENTS TO THE SECURITIES  
12 EXCHANGE ACT OF 1934.—The Securities Exchange Act  
13 of 1934 (15 U.S.C. 78a, et seq.) is amended as follows:

14 (1) Section 3A (15 U.S.C. 78c-1) is amended  
15 by striking “(as defined in section 206B of the  
16 Gramm-Leach-Bliley Act)” each place that the term  
17 appears;

18 (2) Section 9(a) (15 U.S.C. 78i(a)) is amended  
19 by striking paragraphs (2) through (5) and insert-  
20 ing:

21 “(2) To effect, alone or with one or more other  
22 persons, a series of transactions in any security reg-  
23 istered on a national securities exchange or in con-  
24 nection with any security-based swap with respect to  
25 such security creating actual or apparent active



1 trading in such security, or raising or depressing the  
2 price of such security, for the purpose of inducing  
3 the purchase or sale of such security by others.

4 “(3) If a dealer, broker, security-based swap  
5 dealer, major security-based swap participant or  
6 other person selling or offering for sale or pur-  
7 chasing or offering to purchase the security to in-  
8 duce the purchase or sale of any security registered  
9 on a national securities exchange or any security-  
10 based swap with respect to such security by the cir-  
11 culation or dissemination in the ordinary course of  
12 business of information to the effect that the price  
13 of any such security will or is likely to rise or fall  
14 because of market operations of any one or more  
15 persons conducted for the purpose of raising or de-  
16 pressing the price of such security.

17 “(4) If a dealer, broker, security-based swap  
18 dealer, major security-based swap participant or  
19 other person selling or offering for sale or pur-  
20 chasing or offering to purchase the security, to  
21 make, regarding any security registered on a na-  
22 tional securities exchange or any security-based swap  
23 with respect to such security, for the purpose of in-  
24 ducing the purchase or sale of such security or such  
25 security-based swap, any statement which was at the

1 time and in the light of the circumstances under  
2 which it was made, false or misleading with respect  
3 to any material fact, and which he knew or had rea-  
4 sonable ground to believe was so false or misleading.

5 “(5) For a consideration, received directly or  
6 indirectly from a dealer, broker, security-based swap  
7 dealer, major security-based swap participant or  
8 other person selling or offering for sale or pur-  
9 chasing or offering to purchase the security, to in-  
10 duce the purchase of any security registered on a  
11 national securities exchange or any security-based  
12 swap with respect to such security by the circulation  
13 or dissemination of information to the effect that the  
14 price of any such security will or is likely to rise or  
15 fall because of the market operations of any one or  
16 more persons conducted for the purpose of raising or  
17 depressing the price of such security.”.

18 (3) Section 10 (15 U.S.C. 78j) is amended by  
19 striking “(as defined in section 206B of the Gramm-  
20 Leach-Bliley Act)” each place that the term appears;

21 (4) Section 15(c)(1) is amended—

22 (A) in subparagraph (A, by striking “, or  
23 any security-based swap agreement (as defined  
24 in section 206B of the Gramm-Leach-Bliley  
25 Act),”; and

1 (B) in subparagraphs (B) and (C), by  
2 striking “agreement (as defined in section 206B  
3 of the Gramm-Leach-Bliley Act)” in each place  
4 that the term appears;

5 (5) Section 15(i) (15 U.S.C. 78o(i), as added  
6 by section 303(f) of the Commodity Futures Mod-  
7 ernization Act of 2000 (Public Law 106–554; 114  
8 Stat. 2763A–455) is amended by striking “(as de-  
9 fined in section 206B of the Gramm-Leach-Bliley  
10 Act)” ;

11 (6) Section 16 (15 U.S.C. 78p) is amended—

12 (A) in subsection (a)(2)(C), by striking  
13 “(as defined in section 206(b) of the Gramm-  
14 Leach-Bliley Act)”;

15 (B) in subsection (b), by striking “(as de-  
16 fined in section 206B of the Gramm-Leach-Bli-  
17 ley Act)” in each place that the term appears;

18 (C) in subsection (g), by striking “(as de-  
19 fined in section 206B of the Gramm-Leach-Bli-  
20 ley Act)”;

21 (7) Section 20 (15 U.S.C. 78t) is amended—

22 (A) in subsection (d), by striking “(as de-  
23 fined in section 206B of the Gramm-Leach-Bli-  
24 ley Act)” ; and,

1 (B) in subsection (f), by striking “(as de-  
2 fined in section 206B of the Gramm-Leach-Bliley Act)”;  
3

4 (8) Section 21A (15 U.S.C. 78u-1) is amend-  
5 ed—

6 (A) in subsection (a)(1), by striking “(as  
7 defined in section 206B of the Gramm-Leach-  
8 Bliley Act)” and,

9 (B) in subsection (g), by striking “(as de-  
10 fined in section 206B of the Gramm-Leach-Bliley Act)”.  
11

12 **SEC. 203. AMENDMENTS TO THE SECURITIES EXCHANGE**  
13 **ACT OF 1934.**

14 (a) CLEARING AND EXECUTION TRANSPARENCY FOR  
15 SECURITY-BASED SWAPS.—The Securities Exchange Act  
16 of 1934 (15 U.S.C. 78a, et seq.) is amended by adding  
17 the following section after section 3A:

18 **“SEC. 3B. CLEARING AND EXECUTION TRANSPARENCY FOR**  
19 **SECURITY-BASED SWAPS.**

20 “(a) CLEARING REQUIREMENT.—

21 “(1) IN GENERAL.—

22 “(A) PRESUMPTION OF CLEARING.—A se-  
23 curity-based swap shall be submitted for clear-  
24 ing if a clearing agency that is registered under

1 this Act will accept the security-based swap for  
2 clearing.

3 “(B) OPEN ACCESS.—The rules of a clear-  
4 ing agency described in subparagraph (A)  
5 shall—

6 “(i) prescribe that all security-based  
7 swaps submitted to the clearing agency  
8 with the same terms and conditions, prop-  
9 erly submitted and accepted by the clear-  
10 ing agency, are fungible and may be offset  
11 with each other within the clearing agency;  
12 and

13 “(ii) provide for non-discriminatory  
14 clearing of a security-based swap executed  
15 on or through the rules of an unaffiliated  
16 exchange or alternative swap execution fa-  
17 cility.

18 “(2) COMMISSION APPROVAL.—

19 “(A) SUBMISSION FOR APPROVAL.—A  
20 clearing agency shall submit to the Commission  
21 for prior approval each security-based swap, or  
22 any group, category, type or class of security-  
23 based swap, that it seeks to accept for clearing,  
24 which submission the Commission shall make  
25 available to the public.

1           “(B) DEADLINE.—The Commission shall  
2           take final action on a request submitted pursu-  
3           ant to subparagraph (A) not later than 90 days  
4           after submission of the request, unless the  
5           clearing agency submitting the request agrees  
6           to an extension of the time limitation estab-  
7           lished under this subparagraph. A request on  
8           which the Commission fails to take final action  
9           within the time limitation established under this  
10          subparagraph shall be deemed approved.

11          “(C) FACTORS IN APPROVAL.—The Com-  
12          mission shall approve, unconditionally or sub-  
13          ject to such terms and conditions as the Com-  
14          mission determines to be appropriate, any re-  
15          quest submitted pursuant to subparagraph (A)  
16          if it finds that the request is consistent with the  
17          securities laws. In reviewing such request, the  
18          Commission shall also take into account the fol-  
19          lowing factors:

20                 “(i) The existence of significant out-  
21                 standing notional exposures, trading liquid-  
22                 ity and adequate pricing data.

23                 “(ii) The availability of rule frame-  
24                 work, capacity, operational expertise and  
25                 resources, and credit support infrastruc-

1           ture to clear the contract on terms that are  
2           consistent with the material terms and  
3           trading conventions on which the contract  
4           is then traded.

5           “(iii) The impact on the mitigation of  
6           systemic risk, taking into account the size  
7           of the market for such contract and the re-  
8           sources of the clearing agency available to  
9           clear the contract.

10          “(iv) The impact on competition.

11          “(v) The existence of reasonable legal  
12          certainty in the event of the insolvency of  
13          the relevant clearing agency or one or more  
14          of its clearing members with regard to the  
15          treatment of customer and swap  
16          counterparty positions, funds, and prop-  
17          erty.

18          “(D) PRIOR CLEARING OF SWAPS.—Swaps  
19          that are accepted for clearing by a clearing  
20          agency prior to the effective date of the Over-  
21          the-Counter Derivatives Markets Act of 2009  
22          are deemed approved for purposes of this sec-  
23          tion.

24          “(E) RULES.—Not later than 180 days  
25          after the effective date for the Over-the-Counter

1 Derivatives Markets Act of 2009, the Commis-  
2 sion shall adopt rules for a clearing agency's  
3 submission for approval, pursuant to this para-  
4 graph, of a security-based swap, or a group,  
5 category, type or class of security-based swap,  
6 that it seeks to accept for clearing.

7 “(3) STAY OF CLEARING REQUIREMENT.—

8 “(A) AUTHORITY.—At any time after  
9 issuance of an approval pursuant to paragraph  
10 (2), the Commission, on application of a  
11 counterparty to a security-based swap or on its  
12 own initiative, may stay the clearing require-  
13 ment of paragraph (1) until the Commission  
14 completes a review of the terms of the security-  
15 based swap (or the group, category, type or  
16 class of security-based swap) and the clearing  
17 arrangement.

18 “(B) DEADLINE.—The Commission shall  
19 complete a review undertaken pursuant to sub-  
20 paragraph (A) not later than 90 days after  
21 issuance of the stay, unless the clearing agency  
22 that clears the security-based swap, or group,  
23 category, type or class of security-based swap,  
24 agrees to an extension of the time limitation es-  
25 tablished under this subparagraph.



1           “(C) DETERMINATION.—Upon completion  
2 of the review undertaken pursuant to subpara-  
3 graph (A), the Commission may—

4           “(i) determine, unconditionally or sub-  
5 ject to such terms and conditions as the  
6 Commission determines to be appropriate,  
7 that the security-based swap, or group,  
8 category, type or class of security-based  
9 swap, must be cleared pursuant to this  
10 subsection if it finds that such clearing is  
11 consistent with the securities laws; or

12           “(ii) determine that the clearing re-  
13 quirement of paragraph (1) shall not apply  
14 to the security-based swap, or group, cat-  
15 egory, type or class of security-based swap.

16           “(D) RULES.—Not later than 180 days  
17 after the effective date of the Over-the-Counter  
18 Derivatives Markets Act of 2009, the Commis-  
19 sion shall adopt rules for reviewing, pursuant to  
20 this paragraph, a clearing agency’s clearing of  
21 a security-based swap, or a group, category,  
22 type or class of security-based swap, that it has  
23 accepted for clearing.

24           “(4) PREVENTION OF EVASION.—The Commis-  
25 sion may prescribe rules under this section, or issue

1       interpretations of such rules, as necessary to prevent  
2       evasions of this title.

3           “(5) REQUIRED REPORTING.—

4               “(A) IN GENERAL.—All security-based  
5       swaps that are not accepted for clearing by any  
6       clearing agency shall be reported either to a se-  
7       curity-based swap repository described in sub-  
8       section 13(n) or, if there is no security-based  
9       swap repository that would accept the security-  
10      based swap, to the Commission pursuant to sec-  
11      tion 13A within such time period as the Com-  
12      mission may by rule or regulation prescribe.  
13      Counterparties to a security-based swap may  
14      agree which counterparty will report the secu-  
15      rity-based swap as required by this paragraph.

16           “(B) SECURITY-BASED SWAP DEALER DES-  
17      IGNATION.—With regard to security-based  
18      swaps where only one counterparty is a secu-  
19      rity-based swap dealer, the security-based swap  
20      dealer shall report the security-based swap as  
21      required by this paragraph

22           “(6) REPORTING TRANSITION RULES.—Rules  
23      adopted by the Commission under this section shall  
24      provide for the reporting of data, as follows:

1           “(A) Security-based swaps that were en-  
2           tered into before the date of enactment of the  
3           Over-the-Counter Derivatives Markets Act of  
4           2009 shall be reported to a registered security-  
5           based swap repository or the Commission no  
6           later than 180 days after the effective date of  
7           such Act.

8           “(B) Security-based swaps that were en-  
9           tered into on or after the date of enactment of  
10          such Act shall be reported to a registered secu-  
11          rity-based swap repository or the Commission  
12          no later than the later of:

13                 “(i) 90 days after the effective date of  
14                 such Act; or

15                 “(ii) such other time after entering  
16                 into the security-based swap as the Com-  
17                 mission may prescribe by rule or regula-  
18                 tion.

19          “(7) CLEARING TRANSITION RULES.—

20                 “(A) ENTERED INTO BEFORE DATE OF  
21                 ENACTMENT.—Security-based swaps that were  
22                 entered into before the date of enactment of the  
23                 Over-the-Counter Derivatives Markets Act of  
24                 2009 are exempt from the clearing require-  
25                 ments of this subsection provided such security-

1 based swaps are reported pursuant to para-  
2 graph (6)(A).

3 “(B) ENTERED INTO BEFORE BECOMING  
4 CLEARABLE.—Security-based swaps that were  
5 entered into before becoming clearable pursuant  
6 to this subsection are exempt from the clearing  
7 requirements of this subsection provided such  
8 security-based swaps are reported pursuant to  
9 paragraph (6)(B).

10 【“(C) ENTERED INTO BEFORE TIER-1  
11 DESIGNATION.—Security-based swaps that were  
12 entered into with a counterparty in reliance of  
13 the exception in paragraph (8) prior to designa-  
14 tion of such counterparty as a 【Tier 1 financial  
15 holding company】 are exempt from the clearing  
16 requirements of this subsection.】

17 “(8) EXCEPTION.—

18 “(A) IN GENERAL.—The requirements of  
19 subsections (a)(1) and (a)(3) do not apply to a  
20 security-based swap if—

21 “(i) one of the counterparties to the  
22 swap is not a security-based swap dealer or  
23 major security-based swap participant; and

1 “(ii) none of the counterparties to the  
2 security-based swap is a **【Tier 1 financial**  
3 **holding company】**.

4 “(B) ABUSE OF EXEMPTION.—The Com-  
5 mission may prescribe rules under this sub-  
6 section, or issue interpretations of such rules,  
7 as necessary to prevent abuse of the exemption  
8 described under subparagraph (A) by security-  
9 based swap dealers and major security-based  
10 swap participants.

11 “(9) VOLUNTARY REGISTRATION.—A person  
12 that clears agreements, contracts, or transactions  
13 that are not required to be cleared under this Act  
14 may register with the Commission as a clearing  
15 agency.

16 “(b) EXECUTION TRANSPARENCY.—

17 “(1) REQUIREMENT.—A security-based swap  
18 that is subject to the clearing requirement of sub-  
19 section (a) shall be traded on or through an ex-  
20 change, or on or through an alternative swap execu-  
21 tion facility registered under section 3B, that lists  
22 the security-based swap for trading.

23 “(2) EXCEPTIONS.—The requirement of para-  
24 graph (1) does not apply to a security-based swap if

1 no exchange or alternative swap execution facility  
2 lists the security-based swap for trading.

3 “(c) REPORTING.—

4 “(1) IN GENERAL.—A clearing agency that  
5 clears security-based swaps shall provide to the  
6 Commission all information determined by the Com-  
7 mission to be necessary to perform its responsibil-  
8 ities under this Act. The Commission shall adopt  
9 data collection and maintenance requirements for se-  
10 curity-based swaps cleared by clearing agencies that  
11 are comparable to the corresponding requirements  
12 for security-based swaps accepted by security-based  
13 swap repositories and security-based swaps traded  
14 on alternative swap execution facilities. Subject to  
15 section 24, the Commission shall share such infor-  
16 mation, upon request, with the Board, the Com-  
17 modity Futures Trading Commission, the appro-  
18 priate Federal banking agencies, the [Financial  
19 Services Oversight Council], and the Department of  
20 Justice or to other persons the Commission deems  
21 appropriate, including foreign financial supervisors  
22 (including foreign futures authorities), foreign cen-  
23 tral banks, and foreign ministries.

24 “(2) PUBLIC INFORMATION.—A clearing agency  
25 that clears security-based swaps shall provide to the

1 Commission, or its designee, such information as is  
2 required by, and in a form and at a frequency to be  
3 determined by, the Commission, in order to comply  
4 with the public reporting requirements contained in  
5 section 13.

6 “(d) DESIGNATION OF COMPLIANCE OFFICER.—

7 “(1) IN GENERAL.—Each clearing agency that  
8 clears security-based swaps shall designate an indi-  
9 vidual to serve as a compliance officer.

10 “(2) DUTIES.—The compliance officer shall—

11 “(A) report directly to the board or to the  
12 senior officer of the clearing agency;

13 “(B) in consultation with the board of the  
14 clearing agency, a body performing a function  
15 similar to that of a board, or the senior officer  
16 of the clearing agency, resolve any conflicts of  
17 interest that may arise;

18 “(C) be responsible for administering the  
19 policies and procedures required to be estab-  
20 lished pursuant to this section;

21 “(D) ensure compliance with securities  
22 laws and the rules and regulations issued there-  
23 under, including rules prescribed by the Com-  
24 mission pursuant to this section; and

1           “(E) establish procedures for remediation  
2           of non-compliance issues found during compli-  
3           ance office reviews, lookbacks, internal or exter-  
4           nal audit findings, self-reported errors, or  
5           through validated complaints. Procedures will  
6           establish the handling, management response,  
7           remediation, re-testing, and closing of non-com-  
8           pliant issues.

9           “(3) ANNUAL REPORTS REQUIRED.—The com-  
10          pliance officer shall annually prepare and sign a re-  
11          port on the compliance of the clearing agency with  
12          the securities laws and its policies and procedures,  
13          including its code of ethics and conflict of interest  
14          policies, in accordance with rules prescribed by the  
15          Commission. Such compliance report shall accom-  
16          pany the financial reports of the clearing agency  
17          that are required to be furnished to the Commission  
18          pursuant to this section and shall include a certifi-  
19          cation that, under penalty of law, the report is accu-  
20          rate and complete.

21          “(e) CONSULTATION.—The Commission shall consult  
22          with the Commodity Futures Trading Commission and the  
23          appropriate Federal banking agencies prior to adopting  
24          rules under this section.



1       “(f) RULES.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission shall adopt rules governing persons that are registered as clearing agencies for security-based swaps under this Act.

6       “(g) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a clearing agency from registration under this section for the clearing of security-based swaps if the Commission finds that such clearing agency is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator, or the appropriate governmental authorities in the organization’s home country.

15       “(h) CORE PRINCIPLES FOR CLEARING AGENCIES.—

16               “(1) IN GENERAL.—To be registered and to maintain registration as a clearing agency, a clearing agency shall comply with the core principles specified in this subsection. The Commission may conform the core principles to reflect evolving United States and international standards. Except where the Commission determines otherwise by rule or regulation, a clearing agency shall have reasonable discretion in establishing the manner in which it complies with the core principles.

1 “(2) FINANCIAL RESOURCES.—

2 “(A) The clearing agency shall have ade-  
3 quate financial, operational, and managerial re-  
4 sources to discharge its responsibilities.

5 “(B) Financial resources shall at a min-  
6 imum exceed the total amount that would—

7 “(i) enable the clearing agency to  
8 meet its financial obligations to its mem-  
9 bers and participants notwithstanding a  
10 default by the member or participant cre-  
11 ating the largest financial exposure for  
12 that clearing agency in extreme but plau-  
13 sible market conditions; and

14 “(ii) enable the clearing agency to  
15 cover its operating costs for a period of  
16 one year, calculated on a rolling basis.

17 “(3) PARTICIPANT AND PRODUCT ELIGI-  
18 BILITY.—

19 “(A) The clearing agency shall establish—

20 “(i) appropriate admission and con-  
21 tinuing eligibility standards (including suf-  
22 ficient financial resources and operational  
23 capacity to meet obligations arising from  
24 participation in the clearing agency) for

1 members of and participants in the organi-  
2 zation; and

3 “(ii) appropriate standards for deter-  
4 mining eligibility of agreements, contracts,  
5 or transactions submitted to the clearing  
6 agency for clearing.

7 “(B) The clearing agency shall have proce-  
8 dures in place to verify that participation and  
9 membership requirements are met on an ongo-  
10 ing basis.

11 “(C) The clearing agency’s participation  
12 and membership requirements shall be objec-  
13 tive, publicly disclosed, and permit fair and  
14 open access.

15 “(D) The rules of the clearing agency shall  
16 provide for acceptance of a standardized secu-  
17 rity-based swap regardless of the system on  
18 which the transaction was executed.

19 “(4) RISK MANAGEMENT.—

20 “(A) The clearing agency shall have the  
21 ability to manage the risks associated with dis-  
22 charging the responsibilities of a clearing agen-  
23 cy through the use of appropriate tools and pro-  
24 cedures.

1           “(B) The clearing agency shall measure its  
2           credit exposures to its members and partici-  
3           pants at least once each business day and shall  
4           monitor such exposures throughout the business  
5           day.

6           “(C) Through margin requirements and  
7           other risk control mechanisms, a clearing agen-  
8           cy shall limit its exposures to potential losses  
9           from defaults by its members and participants  
10          so that the operations of the clearing agency  
11          would not be disrupted and nondefaulting mem-  
12          bers or participants would not be exposed to  
13          losses that they cannot anticipate or control.

14          “(D) Margin required from all members  
15          and participants shall be sufficient to cover po-  
16          tential exposures in normal market conditions.

17          “(E) The models and parameters used in  
18          setting margin requirements shall be risk-based  
19          and reviewed regularly.

20          “(5) SETTLEMENT PROCEDURES.—The clearing  
21          agency shall—

22                 “(A) complete money settlements on a  
23                 timely basis, and not less than once each busi-  
24                 ness day;

1           “(B) employ money settlement arrange-  
2           ments that eliminate or strictly limit the clear-  
3           ing agency’s exposure to settlement bank risks,  
4           such as credit and liquidity risks from the use  
5           of banks to effect money settlements;

6           “(C) ensure money settlements are final  
7           when effected;

8           “(D) maintain an accurate record of the  
9           flow of funds associated with each money settle-  
10          ment;

11          “(E) have the ability to comply with the  
12          terms and conditions of any permitted netting  
13          or offset arrangements with other clearing orga-  
14          nizations; and

15          “(F) for physical settlements, establish  
16          rules that clearly state the clearing agency’s ob-  
17          ligations with respect to physical deliveries. The  
18          risks from these obligations shall be identified  
19          and managed.

20          “(6) TREATMENT OF FUNDS.—

21          “(A) The clearing agency shall have stand-  
22          ards and procedures designed to protect and en-  
23          sure the safety of member and participant  
24          funds and assets.

1           “(B) The clearing agency shall hold mem-  
2           ber and participant funds and assets in a man-  
3           ner whereby risk of loss or of delay in the clear-  
4           ing agency’s access to the assets and funds is  
5           minimized.

6           “(C) Assets and funds invested by the  
7           clearing agency shall be held in instruments  
8           with minimal credit, market, and liquidity risks.

9           “(7) DEFAULT RULES AND PROCEDURES.—

10           “(A) The clearing agency shall have rules  
11           and procedures designed to allow for the effi-  
12           cient, fair, and safe management of events  
13           when members or participants become insolvent  
14           or otherwise default on their obligations to the  
15           clearing agency.

16           “(B) The clearing agency’s default proce-  
17           dures shall be clearly stated, and they shall en-  
18           sure that the clearing agency can take timely  
19           action to contain losses and liquidity pressures  
20           and to continue meeting its obligations.

21           “(C) The default procedures shall be pub-  
22           licly available.

23           “(8) RULE ENFORCEMENT.—The clearing agen-  
24           cy shall—

1           “(A) maintain adequate arrangements and  
2 resources for the effective monitoring and en-  
3 forcement of compliance with rules of the clear-  
4 ing agency and for resolution of disputes; and

5           “(B) have the authority and ability to dis-  
6 cipline, limit, suspend, or terminate a member’s  
7 or participant’s activities for violations of rules  
8 of the clearing agency.

9           “(9) SYSTEM SAFEGUARDS.—The clearing  
10 agency shall—

11           “(A) establish and maintain a program of  
12 risk analysis and oversight to identify and mini-  
13 mize sources of operational risk through the de-  
14 velopment of appropriate controls and proce-  
15 dures, and the development of automated sys-  
16 tems, that are reliable, secure, and have ade-  
17 quate scalable capacity;

18           “(B) establish and maintain emergency  
19 procedures, backup facilities, and a plan for dis-  
20 aster recovery that allows for the timely recov-  
21 ery and resumption of operations and the ful-  
22 fillment of the clearing agency’s responsibilities  
23 and obligations; and

24           “(C) periodically conduct tests to verify  
25 that backup resources are sufficient to ensure

1 continued order processing and trade matching,  
2 price reporting, market surveillance, and main-  
3 tenance of a comprehensive and accurate audit  
4 trail.

5 “(10) REPORTING.—The clearing agency shall  
6 provide to the Commission all information necessary  
7 for the Commission to conduct oversight of the  
8 clearing agency.

9 “(11) RECORDKEEPING.—The clearing agency  
10 shall maintain records of all activities related to the  
11 business of the clearing agency as a clearing agency  
12 in a form and manner acceptable to the Commission  
13 for a period of 5 years.

14 “(12) PUBLIC INFORMATION.—

15 “(A) The clearing agency shall provide  
16 market participants with sufficient information  
17 to identify and evaluate accurately the risks and  
18 costs associated with using the clearing agen-  
19 cy’s services.

20 “(B) The clearing agency shall make infor-  
21 mation concerning the rules and operating pro-  
22 cedures governing its clearing and settlement  
23 systems (including default procedures) available  
24 to market participants.



1           “(C) The clearing agency shall disclose  
2 publicly and to the Commission information  
3 concerning—

4           “(i) the terms and conditions of con-  
5 tracts, agreements, and transactions  
6 cleared and settled by the clearing agency;

7           “(ii) clearing and other fees that the  
8 clearing agency charges its members and  
9 participants;

10           “(iii) the margin-setting methodology  
11 and the size and composition of the finan-  
12 cial resource package of the clearing agen-  
13 cy;

14           “(iv) other information relevant to  
15 participation in the settlement and clearing  
16 activities of the clearing agency; and

17           “(v) daily settlement prices, volume,  
18 and open interest for all contracts settled  
19 or cleared by it.

20           “(13) INFORMATION-SHARING.—The clearing  
21 agency shall—

22           “(A) enter into and abide by the terms of  
23 all appropriate and applicable domestic and  
24 international information-sharing agreements;  
25 and

1           “(B) use relevant information obtained  
2           from the agreements in carrying out the clear-  
3           ing organization’s risk management program.

4           “(14) ANTITRUST CONSIDERATIONS.—Unless  
5           appropriate to achieve the purposes of this chapter,  
6           the clearing agency shall avoid—

7           “(A) adopting any rule or taking any ac-  
8           tion that results in any unreasonable restraint  
9           of trade; or

10          “(B) imposing any material anticompeti-  
11          tive burden.

12          “(15) GOVERNANCE FITNESS STANDARDS.—

13          “(A) The clearing agency shall establish  
14          governance arrangements that are transparent  
15          in order to fulfill public interest requirements  
16          and to support the objectives of owners and  
17          participants.

18          “(B) The clearing agency shall establish  
19          and enforce appropriate fitness standards for  
20          directors, members of any disciplinary com-  
21          mittee, and members of the clearing agency,  
22          and any other persons with direct access to the  
23          settlement or clearing activities of the clearing  
24          agency, including any parties affiliated with any  
25          of the persons described in this subparagraph.

1           “(16) CONFLICTS OF INTEREST.—The clearing  
2       agency shall establish and enforce rules to minimize  
3       conflicts of interest in the decisionmaking process of  
4       the clearing agency and establish a process for re-  
5       solving such conflicts of interest.

6           “(17) COMPOSITION OF THE BOARDS.—The  
7       clearing agency shall ensure that the composition of  
8       the governing board or committee includes market  
9       participants.

10          “(18) LEGAL RISK.—The clearing agency shall  
11       have a well-founded, transparent, and enforceable  
12       legal framework for each aspect of its activities.”.

13       (b) ALTERNATIVE SWAP EXECUTION FACILITIES.—  
14   The Securities Exchange Act of 1934 (15 U.S.C. 78a, et  
15   seq.) is amended by adding after section 3B (as added  
16   by subsection (a)) the following:

17   **“SEC. 3C. ALTERNATIVE SWAP EXECUTION FACILITIES.**

18       “(a) REGISTRATION.—No person may operate a facil-  
19   ity for the trading of security-based swaps unless the facil-  
20   ity is registered as an alternative swap execution facility  
21   under this section.

22       “(b) REQUIREMENTS FOR TRADING.—

23           “(1) IN GENERAL.—An alternative swap execu-  
24       tion facility that is registered under subsection (a)  
25       may list for trading any security-based swap.

1           “(2) RULES FOR TRADING THROUGH THE FA-  
2           CILITY.—Not later than 180 days after the date of  
3           enactment of the Over-the-Counter Derivatives Mar-  
4           kets Act of 2009, the Commission shall adopt rules  
5           to allow a security-based swap to be traded through  
6           the facilities of an exchange or an alternative swap  
7           execution facility. Such rules shall permit an inter-  
8           mediary, acting as principal or agent, to enter into  
9           or execute a security-based swap, notwithstanding  
10          section 3B(b), if the security-based swap is reported,  
11          recorded, or confirmed in accordance with the rules  
12          of the exchange or alternative swap execution facil-  
13          ity.

14          “(c) TRADING BY EXCHANGES.—An exchange shall,  
15          to the extent that the exchange also operates an alter-  
16          native swap execution facility and uses the same electronic  
17          trade execution system for trading on the exchange and  
18          the alternative swap execution facility, identify whether  
19          the electronic trading is taking place on the exchange or  
20          the alternative swap execution facility.

21          “(d) CORE PRINCIPLES FOR ALTERNATIVE SWAP  
22          EXECUTION FACILITIES.—

23                 “(1) IN GENERAL.—To be registered as, and to  
24                 maintain its registration as, an alternative swap exe-  
25                 cution facility, the facility shall comply with the core

1 principles specified in this subsection and any re-  
2 quirement that the Commission may impose by rule  
3 or regulation pursuant to section 8a(5). Except  
4 where the Commission determines otherwise by rule  
5 or regulation, the facility shall have reasonable dis-  
6 cretion in establishing the manner in which it com-  
7 plies with these core principles.

8 “(2) COMPLIANCE WITH RULES.—The alter-  
9 native swap execution facility shall—

10 “(A) monitor and enforce compliance with  
11 any of the rules of the facility, including the  
12 terms and conditions of the swaps traded on or  
13 through the facility and any limitations on ac-  
14 cess to the facility; and

15 “(B) establish and enforce trading and  
16 participation rules that will deter abuses and  
17 have the capacity to detect, investigate, and en-  
18 force those rules, including means to—

19 “(i) provide market participants with  
20 impartial access to the market; and

21 “(ii) capture information that may be  
22 used in establishing whether rule violations  
23 have occurred.

24 “(3) SECURITY-BASED SWAPS NOT READILY  
25 SUSCEPTIBLE TO MANIPULATION.—The alternative

1 swap execution facility shall permit trading only in  
2 security-based swaps that are not readily susceptible  
3 to manipulation.

4 “(4) MONITORING OF TRADING.—The alter-  
5 native swap execution facility shall—

6 “(A) establish and enforce rules or terms  
7 and conditions defining, or specifications detail-  
8 ing, trading procedures to be used in entering  
9 and executing orders traded on or through its  
10 facilities; and

11 “(B) monitor trading in swaps to prevent  
12 manipulation, price distortion, and disruptions  
13 of the delivery or cash settlement process  
14 through surveillance, compliance, and discipli-  
15 nary practices and procedures, including meth-  
16 ods for conducting real-time monitoring of trad-  
17 ing and comprehensive and accurate trade re-  
18 constructions.

19 “(5) ABILITY TO OBTAIN INFORMATION.—The  
20 alternative swap execution facility shall—

21 “(A) establish and enforce rules that will  
22 allow the facility to obtain any necessary infor-  
23 mation to perform any of the functions de-  
24 scribed in this section;

1           “(B) provide the information to the Com-  
2 mission upon request; and

3           “(C) have the capacity to carry out such  
4 international information-sharing agreements as  
5 the Commission may require.

6           “(6) POSITION LIMITS OR ACCOUNTABILITY.—

7           “(A) To reduce the potential threat of  
8 market manipulation or congestion, the alter-  
9 native swap execution facility shall adopt for  
10 each of its contracts, where necessary and ap-  
11 propriate, position limitations or position ac-  
12 countability.

13           “(B) For any contract that is subject to a  
14 position limitation established by the Commis-  
15 sion pursuant to section 10B, the alternative  
16 swap execution facility shall set its position lim-  
17 itation at a level no higher than the Commis-  
18 sion limitation.

19           “(7) FINANCIAL INTEGRITY OF TRANS-  
20 ACTIONS.—The alternative swap execution facility  
21 shall establish and enforce rules and procedures for  
22 ensuring the financial integrity of security-based  
23 swaps entered on or through its facilities, including  
24 the clearance and settlement of the security-based  
25 swaps pursuant to section 3B.

1           “(8) EMERGENCY AUTHORITY.—The alternative  
2 swap execution facility shall adopt rules to provide  
3 for the exercise of emergency authority, in consulta-  
4 tion or cooperation with the Commission, where nec-  
5 essary and appropriate, including the authority to  
6 suspend or curtail trading in a security-based swap.

7           “(9) TIMELY PUBLICATION OF TRADING INFOR-  
8 MATION.—The alternative swap execution facility  
9 shall make public timely information on price, trad-  
10 ing volume, and other trading data to the extent  
11 prescribed by the Commission.

12           “(10) RECORDKEEPING AND REPORTING.—The  
13 alternative swap execution facility shall maintain  
14 records of all activities related to the business of the  
15 facility, including a complete audit trail, in a form  
16 and manner acceptable to the Commission for a pe-  
17 riod of 5 years, and report to the Commission all in-  
18 formation determined by the Commission to be nec-  
19 essary or appropriate for the Commission to perform  
20 its responsibilities under this Act in a form and  
21 manner acceptable to the Commission. The Commis-  
22 sion shall adopt data collection and reporting re-  
23 quirements for alternative swap execution facilities  
24 that are comparable to corresponding requirements



1 for clearing agencies and security-based swap reposi-  
2 tories.

3 “(11) ANTITRUST CONSIDERATIONS.—Unless  
4 necessary or appropriate to achieve the purposes of  
5 this Act, the alternative swap execution facility shall  
6 avoid—

7 “(A) adopting any rules or taking any ac-  
8 tions that result in any unreasonable restraints  
9 of trade; or

10 “(B) imposing any material anticompeti-  
11 tive burden on trading on the alternative swap  
12 execution facility.

13 “(12) CONFLICTS OF INTEREST.—The alter-  
14 native swap execution facility shall—

15 “(A) establish and enforce rules to mini-  
16 mize conflicts of interest in its decision-making  
17 process; and

18 “(B) establish a process for resolving the  
19 conflicts of interest.

20 “(13) FINANCIAL RESOURCES.—The alternative  
21 swap execution facility shall have adequate financial,  
22 operational, and managerial resources to discharge  
23 its responsibilities. Such financial resources shall be  
24 considered adequate if their value exceeds the total  
25 amount that would enable the facility to cover its op-

1       erating costs for a period of one year, calculated on  
2       a rolling basis.

3           “(14) SYSTEM SAFEGUARDS.—The alternative  
4       swap execution facility shall—

5           “(A) establish and maintain a program of  
6       risk analysis and oversight to identify and mini-  
7       mize sources of operational risk, through the  
8       development of appropriate controls and proce-  
9       dures, and the development of automated sys-  
10      tems, that are reliable, secure, and have ade-  
11      quate scalable capacity;

12          “(B) establish and maintain emergency  
13      procedures, backup facilities, and a plan for dis-  
14      aster recovery that allow for the timely recovery  
15      and resumption of operations and the fulfill-  
16      ment of the alternative swap execution facility’s  
17      responsibilities and obligation; and

18          “(C) periodically conduct tests to verify  
19      that backup resources are sufficient to ensure  
20      continued order processing and trade matching,  
21      price reporting, market surveillance, and main-  
22      tenance of a comprehensive and accurate audit  
23      trail.

24          “(15) DESIGNATION OF COMPLIANCE OFFI-  
25      CER.—

1           “(A) IN GENERAL.—Each alternative swap  
2 execution facility shall designate an individual  
3 to serve as a compliance officer.

4           “(B) DUTIES.—The compliance officer—

5               “(i) shall report directly to the board  
6 or to the senior officer of the facility; and

7               “(ii) shall—

8                   “(I) review compliance with the  
9 core principles in section 3B(e).

10                   “(II) in consultation with the  
11 board of the facility, a body per-  
12 forming a function similar to that of  
13 a board, or the senior officer of the  
14 facility, resolve any conflicts of inter-  
15 est that may arise;

16                   “(III) be responsible for admin-  
17 istering the policies and procedures  
18 required to be established pursuant to  
19 this section; and

20                   “(IV) ensure compliance with se-  
21 curities laws and the rules and regula-  
22 tions issued thereunder, including  
23 rules prescribed by the Commission  
24 pursuant to this section; and

1                   “(iii) shall establish procedures for re-  
2                   mediation of non-compliance issues found  
3                   during compliance office reviews,  
4                   lookbacks, internal or external audit find-  
5                   ings, self-reported errors, or through vali-  
6                   dated complaints and to establish the han-  
7                   dling, management response, remediation,  
8                   re-testing, and closing of non-compliant  
9                   issues.

10                  “(C) ANNUAL REPORTS REQUIRED.—The  
11                  compliance officer shall annually prepare and  
12                  sign a report on the compliance of the facility  
13                  with the securities laws and its policies and pro-  
14                  cedures, including its code of ethics and conflict  
15                  of interest policies, in accordance with rules  
16                  prescribed by the Commission. Such compliance  
17                  report shall accompany the financial reports of  
18                  the facility that are required to be furnished to  
19                  the Commission pursuant to this section and  
20                  shall include a certification that, under penalty  
21                  of law, the report is accurate and complete.

22                  “(e) EXEMPTIONS.—The Commission may exempt,  
23                  conditionally or unconditionally, an alternative swap ex-  
24                  emption facility from registration under this section if the  
25                  Commission finds that such organization is subject to

1 comparable, comprehensive supervision and regulation on  
2 a consolidated basis by the Commodity Futures Trading  
3 Commission, a Prudential Regulator or the appropriate  
4 governmental authorities in the organization's home coun-  
5 try.

6 “(f) RULES.—Not later than 180 days after the date  
7 of enactment of the Over-the-Counter Derivatives Markets  
8 Act of 2009, the Commission shall prescribe rules gov-  
9 erning the regulation of alternative swap execution facili-  
10 ties under this section.”.

11 (c) SEGREGATION OF ASSETS HELD AS COLLATERAL  
12 IN SWAP TRANSACTIONS.—The Securities Exchange Act  
13 of 1934 (15 U.S.C. 78a, et seq.) is further amended by  
14 adding after section 3C (as added by subsection (b) the  
15 following:

16 **“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL**  
17 **IN SWAP TRANSACTIONS.**

18 “(a) CLEARED SWAPS.—A security-based swap deal-  
19 er or clearing agency by or through which funds or other  
20 property are held as margin or collateral to secure the obli-  
21 gations of a counterparty under a security-based swap to  
22 be cleared by or through a derivatives clearing agency  
23 shall segregate, maintain, and use the funds or other prop-  
24 erty for the benefit of the counterparty, in accordance with  
25 such rules and regulations as the Commission or Pruden-

1 tial Regulator shall prescribe. Any such funds or other  
2 property shall be treated as customer property under this  
3 Act.

4 “(b) OVER-THE-COUNTER SWAPS.—At the request of  
5 a counterparty to a security-based swap who provides  
6 funds or other property to a swap dealer as margin or  
7 collateral to secure the obligations of the counterparty  
8 under a security-based swap between the counterparty and  
9 the swap dealer that is not submitted for clearing to a  
10 derivatives clearing agency, the swap dealer shall seg-  
11 regate the funds or other property for the benefit of the  
12 counterparty, and maintain the funds or other property  
13 in an account which is carried by a third-party custodian  
14 and designated as a segregated account for the  
15 counterparty, in accordance with such rules and regula-  
16 tions as the Commission or Prudential Regulator may pre-  
17 scribe. This subsection shall not be interpreted to preclude  
18 commercial arrangements regarding the investment of the  
19 segregated funds or other property and the related alloca-  
20 tion of gains and losses resulting from any such invest-  
21 ment.”.

22 (d) TRADING IN SECURITY-BASED SWAPS.—Section  
23 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)  
24 is amended by adding at the end the following:

1 “(l) It shall be unlawful for any person to effect a  
2 transaction in a security-based swap with or for a person  
3 that is not an eligible contract participant unless such  
4 transaction is effected on a national securities exchange  
5 registered pursuant to subsection (b).”.

6 (e) REGISTRATION AND REGULATION OF SWAP  
7 DEALERS AND MAJOR SWAP PARTICIPANTS.—The Secu-  
8 rities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is  
9 amended by inserting after section 15E (15 U.S.C. 78o–  
10 7) the following:

11 **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-**  
12 **BASED SWAP DEALERS AND MAJOR SECU-**  
13 **RITY-BASED SWAP PARTICIPANTS.**

14 “(a) REGISTRATION.—

15 “(1) It shall be unlawful for any person to act  
16 as a security-based swap dealer unless such person  
17 is registered as a security-based swap dealer with  
18 the Commission.

19 “(2) It shall be unlawful for any person to act  
20 as a major security-based swap participant unless  
21 such person is registered as a major security-based  
22 swap participant with the Commission.

23 “(b) REQUIREMENTS.—

24 “(1) IN GENERAL.—A person shall register as  
25 a security-based swap dealer or major security-based

1 swap participant by filing a registration application  
2 with the Commission.

3 “(2) CONTENTS.—The application shall be  
4 made in such form and manner as prescribed by the  
5 Commission, giving any information and facts as the  
6 Commission may deem necessary concerning the  
7 business in which the applicant is or will be engaged.  
8 Such person, when registered as a security-based  
9 swap dealer or major security-based swap partici-  
10 pant, shall continue to report and furnish to the  
11 Commission such information pertaining to such  
12 person’s business as the Commission may require.

13 “(3) EXPIRATION.—Each registration shall ex-  
14 pire at such time as the Commission may by rule or  
15 regulation prescribe.

16 “(4) RULES.—Except as provided in sub-  
17 sections (c) and (d), the Commission may prescribe  
18 rules applicable to security-based swap dealers and  
19 major security-based swap participants, including  
20 rules that limit the activities of security-based swap  
21 dealers and major security-based swap participants.  
22 Except as provided in [subsection (d)], the Commis-  
23 sion may provide conditional or unconditional ex-  
24 emptions from rules prescribed under this section for  
25 security-based swap dealers and major security-



1 based swap participants that are subject to substan-  
2 tially similar requirements as brokers or dealers.

3 “(5) TRANSITION.—Rules adopted under this  
4 section shall provide for the registration of security-  
5 based swap dealers and major security-based swap  
6 participants no later than 1 year after the effective  
7 date of the Over-the-Counter Derivatives Markets  
8 Act of 2009.

9 “(c) RULES.—

10 “(1) IN GENERAL.—Not later than 180 days  
11 after the effective date of the Over-the-Counter De-  
12 rivatives Markets Act of 2009, the Commission shall  
13 adopt rules for persons that are registered as secu-  
14 rity-based swap dealers or major security-based swap  
15 participants under this Act.

16 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-  
17 MENTS.—The Commission shall not prescribe rules  
18 imposing prudential requirements (including activity  
19 restrictions) on security-based swap dealers or major  
20 security-based swap participants for which there is a  
21 Prudential Regulator. This provision shall not be  
22 construed as limiting the authority of the Commis-  
23 sion to prescribe appropriate business conduct, re-  
24 porting, and recordkeeping requirements to protect  
25 investors.

1 “(d) CAPITAL AND MARGIN REQUIREMENTS.—

2 “(1) IN GENERAL.—

3 “(A) BANK SECURITY-BASED SWAP DEAL-  
4 ERS AND MAJOR SECURITY-BASED SWAP PAR-  
5 TICIPANTS.—Each registered security-based  
6 swap dealer and major security-based swap par-  
7 ticipant for which there is a Prudential Regu-  
8 lator shall meet such minimum capital require-  
9 ments and minimum initial and variation mar-  
10 gin requirements as the Prudential Regulators  
11 shall by rule or regulation jointly prescribe  
12 that—

13 “(i) help ensure the safety and sound-  
14 ness of the security-based swap dealer or  
15 major security-based swap participant; and

16 “(ii) are appropriate for the risk asso-  
17 ciated with the non-cleared swaps held as  
18 a swap dealer or major swap participant.

19 “(B) NON-BANK SECURITY-BASED SWAP  
20 DEALERS AND MAJOR SECURITY-BASED SWAP  
21 PARTICIPANTS.—Each registered security-based  
22 swap dealer and major security-based swap par-  
23 ticipant for which there is not a Prudential  
24 Regulator shall meet such minimum capital re-  
25 quirements and minimum initial and variation

margin requirements as the Commission, in consultation with the Commodity Futures Trading Commission, shall by rule or regulation prescribe that—

“(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and

“(ii) are appropriate for the risk associated with the non-cleared swaps held as the swap dealer or major swap participant.

“(2) RULES.—

“(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Not later than 180 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Prudential Regulators, in consultation with the Commission and the Commodity Futures Trading Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants, with respect to their activities as a security-based swap dealer or major security-based swap participant for which there is a Prudential Regulator.

1           “(B) NON-BANK SECURITY-BASED SWAP  
2           DEALERS AND MAJOR SECURITY-BASED SWAP  
3           PARTICIPANTS.—Not later than 180 days after  
4           the date of enactment of the Over-the-Counter  
5           Derivatives Markets Act of 2009, the Commis-  
6           sion shall adopt rules imposing capital and mar-  
7           gin requirements under this subsection for secu-  
8           rity-based swap dealers and major security-  
9           based swap participants for which there is no  
10          Prudential Regulator.

11          “(3) AUTHORITY.—Nothing in this section shall  
12          limit the authority of the Commission to set capital  
13          requirements for a broker or dealer registered in ac-  
14          cordance with section 15 of this Act.

15          “(e) REPORTING AND RECORDKEEPING.—

16               “(1) IN GENERAL.—Each registered security-  
17          based swap dealer and major security-based swap  
18          participant—

19                   “(A) shall make such reports as are pre-  
20                  scribed by the Commission by rule or regulation  
21                  regarding the transactions and positions and fi-  
22                  nancial condition of such person;

23                   “(B) for which—

24                               “(i) there is a Prudential Regulator  
25                               shall keep books and records of all activi-

1           ties related to its business as a security-  
2           based swap dealer or major security-based  
3           swap participant in such form and manner  
4           and for such period as may be prescribed  
5           by the Commission by rule or regulation;

6           “(ii) there is no Prudential Regulator  
7           shall keep books and records in such form  
8           and manner and for such period as may be  
9           prescribed by the Commission by rule or  
10          regulation; and

11          “(C) shall keep such books and records  
12          open to inspection and examination by any rep-  
13          resentative of the Commission.

14          “(2) RULES.—Not later than 1 year after the  
15          date of enactment of the Over-the-Counter Deriva-  
16          tives Markets Act of 2009, the Commission shall  
17          adopt rules governing reporting and recordkeeping  
18          for security-based swap dealers and major security-  
19          based swap participants.

20          “(f) DAILY TRADING RECORDS.—

21          “(1) IN GENERAL.—Each registered security-  
22          based swap dealer and major security-based swap  
23          participant shall maintain daily trading records of  
24          its security-based swaps and all related records (in-  
25          cluding related transactions) and recorded commu-

1       nications including but not limited to electronic mail,  
2       instant messages, and recordings of telephone calls,  
3       for such period as may be prescribed by the Com-  
4       mission by rule or regulation.

5           “(2) INFORMATION REQUIREMENTS.—The daily  
6       trading records shall include such information as the  
7       Commission shall prescribe by rule or regulation.

8           “(3) CUSTOMER RECORDS.—Each registered se-  
9       curity-based swap dealer or major security-based  
10      swap participant shall maintain daily trading records  
11      for each customer or counterparty in such manner  
12      and form as to be identifiable with each security-  
13      based swap transaction.

14          “(4) AUDIT TRAIL.—Each registered security-  
15      based swap dealer or major security-based swap par-  
16      ticipant shall maintain a complete audit trail for  
17      conducting comprehensive and accurate trade recon-  
18      structions.

19          “(5) RULES.—Not later than 1 year after the  
20      date of the enactment of the Over-the-Counter De-  
21      rivatives Markets Act of 2009, the Commission shall  
22      adopt rules governing daily trading records for secu-  
23      rity-based swap dealers and major security-based  
24      swap participants.

25          “(g) BUSINESS CONDUCT STANDARDS.—

1           “(1) IN GENERAL.—Each registered security-  
2       based swap dealer and major security-based swap  
3       participant shall conform with business conduct  
4       standards as may be prescribed by the Commission  
5       by rule or regulation addressing—

6           “(A) fraud, manipulation, and other abu-  
7       sive practices involving security-based swaps  
8       (including security-based swaps that are offered  
9       but not entered into);

10          “(B) diligent supervision of its business as  
11       a security-based swap dealer;

12          “(C) adherence to all applicable position  
13       limits; and

14          “(D) such other matters as the Commis-  
15       sion shall determine to be necessary or appro-  
16       priate.

17          “(2) BUSINESS CONDUCT REQUIREMENTS.—  
18       Business conduct requirements adopted by the Com-  
19       mission shall—

20          “(A) establish the standard of care for a  
21       security-based swap dealer or major security-  
22       based swap participant to verify that any secu-  
23       rity-based swap counterparty meets the eligi-  
24       bility standards for an eligible contract partici-  
25       pant;

1           “(B) require disclosure by the security-  
2           based swap dealer or major security-based swap  
3           participant to any counterparty to the security-  
4           based swap (other than a security-based swap  
5           dealer or major security-based swap partici-  
6           pant) of:

7                   “(i) information about the material  
8                   risks and characteristics of the security-  
9                   based swap;

10                   “(ii) the source and amount of any  
11                   fees or other material remuneration that  
12                   the security-based swap dealer or major se-  
13                   curity-based swap participant would di-  
14                   rectly or indirectly expect to receive in con-  
15                   nection with the security-based swap; and

16                   “(iii) any other material incentives or  
17                   conflicts of interest that the security-based  
18                   swap dealer or major security-based swap  
19                   participant may have in connection with  
20                   the security-based swap; and

21           “(C) establish such other standards and  
22           requirements as the Commission may determine  
23           are necessary or appropriate in the public inter-  
24           est, for the protection of investors, or otherwise  
25           in furtherance of the purposes of this title.



1           “(3) RULES.—The Commission shall prescribe  
2 rules under this subsection governing business con-  
3 duct standards for security-based swap dealers and  
4 major security-based swap participants not later  
5 than 1 year after the date of enactment of the Over-  
6 the-Counter Derivatives Markets Act of 2009.

7           “(h) DOCUMENTATION AND BACK OFFICE STAND-  
8 ARDS.—

9           “(1) IN GENERAL.—Each registered security-  
10 based swap dealer and major security-based swap  
11 participant shall conform with standards, as may be  
12 prescribed by the Commission by rule or regulation,  
13 addressing timely and accurate confirmation, proc-  
14 essing, netting, documentation, and valuation of all  
15 security-based swaps.

16           “(2) RULES.—Not later than 1 year after the  
17 date of enactment of the Over-the-Counter Deriva-  
18 tives Markets Act of 2009, the Commission and the  
19 appropriate Federal banking agencies, shall adopt  
20 rules governing documentation and back office  
21 standards for security-based swap dealers and major  
22 security-based swap participants.

23           “(i) DEALER RESPONSIBILITIES.—Each registered  
24 security-based swap dealer and major security-based swap

1 participant at all times shall comply with the following re-  
2 quirements:

3 “(1) MONITORING OF TRADING.—The security-  
4 based swap dealer or major security-based swap par-  
5 ticipant shall monitor its trading in security-based  
6 swaps to prevent violations of applicable position  
7 limits.

8 “(2) DISCLOSURE OF GENERAL INFORMA-  
9 TION.—The security-based swap dealer or major se-  
10 curity-based swap participant shall disclose to the  
11 Commission or to the Prudential Regulator for such  
12 security-based swap dealer or major security-based  
13 swap participant, as applicable, information con-  
14 cerning—

15 “(A) terms and conditions of its security-  
16 based swaps;

17 “(B) security-based swap trading oper-  
18 ations, mechanisms, and practices;

19 “(C) financial integrity protections relating  
20 to security-based swaps; and

21 “(D) other information relevant to its trad-  
22 ing in security-based swaps.

23 “(3) ABILITY TO OBTAIN INFORMATION.—The  
24 security-based swap dealer or major swap security-  
25 based participant shall—

1           “(A) establish and enforce internal systems  
2           and procedures to obtain any necessary infor-  
3           mation to perform any of the functions de-  
4           scribed in this section; and

5           “(B) provide the information to the Com-  
6           mission or to the Prudential Regulator for such  
7           security-based swap dealer or major security-  
8           based swap participant, as applicable, upon re-  
9           quest.

10          “(4) CONFLICTS OF INTEREST.—The security-  
11         based swap dealer and major security-based swap  
12         participant shall implement conflict-of-interest sys-  
13         tems and procedures that—

14                 “(A) establish structural and institutional  
15                 safeguards to assure that the activities of any  
16                 person within the firm relating to research or  
17                 analysis of the price or market for any security  
18                 are separated by appropriate informational par-  
19                 titions within the firm from the review, pres-  
20                 sure, or oversight of those whose involvement in  
21                 trading or clearing activities might potentially  
22                 bias their judgment or supervision; and

23                 “(B) address such other issues as the  
24                 Commission determines appropriate.

1           “(5) ANTITRUST CONSIDERATIONS.—Unless  
2           necessary or appropriate to achieve the purposes of  
3           this Act, the security-based swap dealer or major se-  
4           curity-based swap participant shall avoid—

5                   “(A) adopting any processes or taking any  
6                   actions that result in any unreasonable re-  
7                   straints of trade; or

8                   “(B) imposing any material anticompeti-  
9                   tive burden on trading.

10          “(j) STATUTORY DISQUALIFICATION.—Except to the  
11          extent otherwise specifically provided by rule, regulation,  
12          or order of the Commission, it shall be unlawful for a secu-  
13          rity-based swap dealer or a major security-based swap par-  
14          ticipant to permit any person associated with a security-  
15          based swap dealer or a major security-based swap partici-  
16          pant who is subject to a statutory disqualification to effect  
17          or be involved in effecting security-based swaps on behalf  
18          of such security-based swap dealer or major security-based  
19          swap participant, if such security-based swap dealer or  
20          major security-based swap participant knew, or in the ex-  
21          ercise of reasonable care should have known, of such stat-  
22          utory disqualification.

23          “(k) ENFORCEMENT AND ADMINISTRATIVE PRO-  
24          CEEDING AUTHORITY.—

25                 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

1           “(A) SEC.—Except as provided in sub-  
2 paragraph (B), the Commission shall have ex-  
3 clusive authority to enforce the amendments  
4 made by title II of the Over-the-Counter De-  
5 rivatives Markets Act of 2009 with respect to  
6 any person.

7           “(B) PRUDENTIAL REGULATORS.—The  
8 Prudential Regulators shall have exclusive au-  
9 thority to enforce the provisions of section  
10 15F(e) and other prudential requirements of  
11 this Act with respect to banks, and branches or  
12 agencies of foreign banks that are security-  
13 based swap dealers or major security-based  
14 swap participants.

15           “(C) REFERRAL.—

16           “(i) VIOLATIONS OF NONPRUDENTIAL  
17 REQUIREMENTS.—If the Prudential Regu-  
18 lator for a security-based swap dealer or  
19 major security-based swap participant has  
20 cause to believe that such security-based  
21 swap dealer or major security-based swap  
22 participant may have engaged in conduct  
23 that constitutes a violation of the non-  
24 prudential requirements of section 15F or  
25 rules adopted by the Commission there-

1 under, that Prudential Regulator may rec-  
2 ommend in writing to the Commission that  
3 the Commission initiate an enforcement  
4 proceeding as authorized under this Act.  
5 The recommendation shall be accompanied  
6 by a written explanation of the concerns  
7 giving rise to the recommendation.

8 “(ii) VIOLATIONS OF PRUDENTIAL RE-  
9 QUIREMENTS.—If the Commission has  
10 cause to believe that a securities-based  
11 swap dealer or major securities-based swap  
12 participant that has a Prudential Regu-  
13 lator may have engaged in conduct that  
14 constitute a violation of the prudential re-  
15 quirements of section 15F(e) or rules  
16 adopted thereunder, the Commission may  
17 recommend in writing to the Prudential  
18 Regulator that the Prudential Regulator  
19 initiate an enforcement proceeding as au-  
20 thorized under this Act. The recommenda-  
21 tion shall be accompanied by a written ex-  
22 planation of the concerns giving rise to the  
23 recommendation.

24 “(2) CENSURE, DENIAL, SUSPENSION; NOTICE  
25 AND HEARING.—The Commission, by order, shall

1       censure, place limitations on the activities, functions,  
2       or operations of, or revoke the registration of any se-  
3       curity-based swap dealer or major security-based  
4       swap participant that has registered with the Com-  
5       mission pursuant to subsection (b) if it finds, on the  
6       record after notice and opportunity for hearing, that  
7       such censure, placing of limitations, or revocation is  
8       in the public interest and that such security-based  
9       swap dealer or major security-based swap partici-  
10      pant, or any person associated with such security-  
11      based swap dealer or major security-based swap par-  
12      ticipant effecting or involved in effecting trans-  
13      actions in security-based swaps on behalf of such se-  
14      curity-based swap dealer or major security-based  
15      swap participant, whether prior or subsequent to be-  
16      coming so associated—

17               “(A) has committed or omitted any act, or  
18               is subject to an order or finding, enumerated in  
19               subparagraph (A), (D), or (E) of paragraph (4)  
20               of section 15(b);

21               “(B) has been convicted of any offense  
22               specified in subparagraph (B) of such para-  
23               graph (4) within 10 years of the commencement  
24               of the proceedings under this subsection;

1           “(C) is enjoined from any action, conduct,  
2           or practice specified in subparagraph (C) of  
3           such paragraph (4);

4           “(D) is subject to an order or a final order  
5           specified in subparagraph (F) or (H), respec-  
6           tively, of such paragraph (4); or

7           “(E) has been found by a foreign financial  
8           regulatory authority to have committed or omit-  
9           ted any act, or violated any foreign statute or  
10          regulation, enumerated in subparagraph (G) of  
11          such paragraph (4).

12          “(3) ASSOCIATED PERSONS.—With respect to  
13          any person who is associated, who is seeking to be-  
14          come associated, or, at the time of the alleged mis-  
15          conduct, who was associated or was seeking to be-  
16          come associated with a security-based swap dealer or  
17          major security-based swap participant for the pur-  
18          pose of effecting or being involved in effecting secu-  
19          rity-based swaps on behalf of such security-based  
20          swap dealer or major security-based swap partici-  
21          pant, the Commission, by order, shall censure, place  
22          limitations on the activities or functions of such per-  
23          son, or suspend for a period not exceeding 12  
24          months, or bar such person from being associated  
25          with a security-based swap dealer or major security-



1 based swap participant, if the Commission finds, on  
2 the record after notice and opportunity for a hear-  
3 ing, that such censure, placing of limitations, sus-  
4 pension, or bar is in the public interest and that  
5 such person—

6 “(A) has committed or omitted any act, or  
7 is subject to an order or finding, enumerated in  
8 subparagraph (A), (D), or (E) of paragraph (4)  
9 of section 15(b);

10 “(B) has been convicted of any offense  
11 specified in subparagraph (B) of such para-  
12 graph (4) within 10 years of the commencement  
13 of the proceedings under this subsection;

14 “(C) is enjoined from any action, conduct,  
15 or practice specified in subparagraph (C) of  
16 such paragraph (4);

17 “(D) is subject to an order or a final order  
18 specified in subparagraph (F) or (H), respec-  
19 tively, of such paragraph (4); or

20 “(E) has been found by a foreign financial  
21 regulatory authority to have committed or omit-  
22 ted any act, or violated any foreign statute or  
23 regulation, enumerated in subparagraph (G) of  
24 such paragraph (4).

1           “(4) UNLAWFUL CONDUCT.—It shall be unlaw-  
2       ful—

3           “(A) for any person as to whom an order  
4       under paragraph (3) is in effect, without the  
5       consent of the Commission, willfully to become,  
6       or to be, associated with a security-based swap  
7       dealer or major security-based swap participant  
8       in contravention of such order; or

9           “(B) for any security-based swap dealer or  
10       major security-based swap participant to permit  
11       such a person, without the consent of the Com-  
12       mission, to become or remain a person associ-  
13       ated with the security-based swap dealer or  
14       major security-based swap participant in con-  
15       travention of such order, if such security-based  
16       swap dealer or major security-based swap par-  
17       ticipant knew, or in the exercise of reasonable  
18       care should have known, of such order.”.

19       (f) ADDITIONS OF SECURITY-BASED SWAPS TO CER-  
20       TAIN ENFORCEMENT PROVISIONS.—Paragraphs (1)  
21       through (3) of section 9(b) of the Securities Exchange Act  
22       of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read  
23       as follows:

24           “(1) any transaction in connection with any se-  
25       curity whereby any party to such transaction ac-

1       quires (A) any put, call, straddle, or other option or  
2       privilege of buying the security from or selling the  
3       security to another without being bound to do so;  
4       (B) any security futures product on the security; or  
5       (C) any security-based swap involving the security or  
6       the issuer of the security; or

7               “(2) any transaction in connection with any se-  
8       curity with relation to which he has, directly or indi-  
9       rectly, any interest in any (A) such put, call, strad-  
10      dle, option, or privilege; (B) such security futures  
11      product; or (C) such security-based swap; or

12              “(3) any transaction in any security for the ac-  
13      count of any person who he has reason to believe  
14      has, and who actually has, directly or indirectly, any  
15      interest in any (A) such put, call, straddle, option,  
16      or privilege; (B) such security futures product with  
17      relation to such security; or (C) any security-based  
18      swap involving such security or the issuer of such se-  
19      curity.”.

20       (g) RULEMAKING AUTHORITY TO PREVENT FRAUD,  
21      MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-  
22      BASED SWAPS.—Section 9 of the Securities Exchange Act  
23      of 1934 (15 U.S.C. 78i) is amended by adding at the end  
24      the following:

1       “(i) It shall be unlawful for any person, directly or  
2 indirectly, by the use of any means or instrumentality of  
3 interstate commerce or of the mails, or of any facility of  
4 any national securities exchange, to effect any transaction  
5 in, or to induce or attempt to induce the purchase or sale  
6 of, any security-based swap, in connection with which such  
7 person engages in any fraudulent, deceptive, or manipula-  
8 tive act or practice, makes any fictitious quotation, or en-  
9 gages in any transaction, practice, or course of business  
10 which operates as a fraud or deceit upon any person. The  
11 Commission shall, for the purposes of this paragraph, by  
12 rules and regulations define, and prescribe means reason-  
13 ably designed to prevent, such transactions, acts, prac-  
14 tices, and courses of business as are fraudulent, deceptive,  
15 or manipulative, and such quotations as are fictitious.”.

16       (h) POSITION LIMITS AND POSITION ACCOUNT-  
17 ABILITY FOR SECURITY-BASED SWAPS.—The Securities  
18 Exchange Act of 1934 is amended by inserting after sec-  
19 tion 10A (15 U.S.C. 78j–1) the following new section:

20       **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**  
21                   **ABILITY FOR SECURITY-BASED SWAPS AND**  
22                   **LARGE TRADER REPORTING.**

23       “(a) POSITION LIMITS.—As a means reasonably de-  
24 signed to prevent fraud and manipulation, the Commission  
25 may, by rule or regulation, as necessary or appropriate

1 in the public interest or for the protection of investors,  
2 establish limits (including related hedge exemption provi-  
3 sions) on the size of positions in any security-based swap  
4 or security-based swap agreement that may be held by any  
5 person. In establishing such limits, the Commission may  
6 require any person to aggregate positions in—

7 “(1) any security-based swap and any security  
8 or loan or group or index of securities or loans on  
9 which such security-based swap is based, which such  
10 security-based swap references, or to which such se-  
11 curity-based swap is related as described in section  
12 (a)(3) of the Over-the-Counter Derivatives Markets  
13 Act of 2009, and any security-based swap agreement  
14 and any other instrument relating to such security  
15 or loan or group or index of securities or loans; or

16 “(2) any security-based swap and (A) any secu-  
17 rity or group or index of securities, the price, yield,  
18 value, or volatility of which, or of which any interest  
19 therein, is the basis for a material term of such se-  
20 curity-based swap as described in section 3(a)(76) of  
21 the Securities Exchange Act of 1934 and (B) any  
22 security-based swap and any other instrument relat-  
23 ing to the same security or group or index of securi-  
24 ties.

1       “(b) EXEMPTIONS.—The Commission, by rule, regu-  
2   lation, or order, may conditionally or unconditionally ex-  
3   empt any person or class of persons, any security-based  
4   swap or class of security-based swaps, or any transaction  
5   or class of transactions from any requirement it may es-  
6   tablish under this section with respect to position limits.

7       “(c) SRO RULES.—

8           “(1) IN GENERAL.—As a means reasonably de-  
9   signed to prevent fraud or manipulation, the Com-  
10   mission, by rule, regulation, or order, as necessary  
11   or appropriate in the public interest, for the protec-  
12   tion of investors, or otherwise in furtherance of the  
13   purposes of this title, may direct a self-regulatory  
14   organization—

15           “(A) to adopt rules regarding the size of  
16   positions in any security-based swap that may  
17   be held by—

18           “(i) any member of such self-regu-  
19   latory organization; or

20           “(ii) any person for whom a member  
21   of such self-regulatory organization effects  
22   transactions in such security-based swap or  
23   other security-based swap agreement; and

1           “(B) to adopt rules reasonably designed to  
2           ensure compliance with requirements prescribed  
3           by the Commission under paragraph (c)(1)(A).

4           “(2) REQUIREMENT TO AGGREGATE POSI-  
5           TIONS.—In establishing such limits, the self-regu-  
6           latory organization may require such member or per-  
7           son to aggregate positions in—

8           “(A) any security-based swap and any se-  
9           curity or loan or group or index of securities or  
10          loans on which such security-based swap is  
11          based, which such security-based swap ref-  
12          erences, or to which such security-based swap is  
13          related as described in section 3(a) of the Over-  
14          the-Counter Derivatives Markets Act of 2009,  
15          and any security-based swap agreement and  
16          any other instrument relating to such security  
17          or loan or group or index of securities or loans;  
18          or

19          “(B)(i) any security-based swap;

20          “(ii) any security or group or index of se-  
21          curities, the price, yield, value, or volatility of  
22          which, or of which any interest therein, is the  
23          basis for a material term of such security-based  
24          swap as described in section 3(a)(76) of the Se-  
25          curities Exchange Act of 1934; and

1           “(iii) any security-based swap and any  
2           other instrument relating to the same security  
3           or group or index of securities.

4           “(d) LARGE TRADER REPORTING.—The Commis-  
5           sion, by rule or regulation, may require any person that  
6           effects transactions for such person’s own account or the  
7           account of others in any securities-based swap or security-  
8           based swap agreement and any security or loan or group  
9           or index of securities or loans as set forth in paragraphs  
10          (a)(1) and (2) under this section to report such informa-  
11          tion as the Commission may prescribe regarding any posi-  
12          tion or positions in any security-based swap or security-  
13          based swap agreement and any security or loan or group  
14          or index of securities or loans and any other instrument  
15          relating to such security or loan or group or index of secu-  
16          rities or loans as set forth in paragraphs (a)(1) and (2)  
17          under this section.”.

18          (i) PUBLIC REPORTING AND REPOSITORIES FOR SE-  
19          curity-BASED SWAPS.—Section 13 of the Securities Ex-  
20          change Act of 1934 (15 U.S.C. 78m) is amended by add-  
21          ing at the end the following:

22          “(m) PUBLIC REPORTING OF AGGREGATE SECURITY-  
23          BASED SWAP DATA.—

24                 “(1) IN GENERAL.—The Commission, or a per-  
25          son designated by the Commission pursuant to para-



1 graph (2), shall make available to the public, in a  
2 manner that does not disclose the business trans-  
3 actions and market positions of any person, aggre-  
4 gate data on security-based swap trading volumes  
5 and positions from the sources set forth in para-  
6 graph (3).

7 “(2) DESIGNEE OF THE COMMISSION.—The  
8 Commission may designate a clearing agency or a  
9 security-based swap repository to carry out the pub-  
10 lic reporting described in paragraph (1).

11 “(3) SOURCES OF INFORMATION.—The sources  
12 of the information to be publicly reported as de-  
13 scribed in paragraph (1) are—

14 “(A) clearing agencies pursuant to section  
15 3A;

16 “(B) security-based swap repositories pur-  
17 suant to subsection (n); and

18 “(C) reports received by the Commission  
19 pursuant to section 13A.

20 “(n) SECURITY-BASED SWAP REPOSITORIES.—

21 “(1) REGISTRATION REQUIREMENT.—

22 “(A) IN GENERAL.—It shall be unlawful  
23 for a security-based swap repository, unless reg-  
24 istered with the Commission, directly or indi-  
25 rectly to make use of the mails or any means

1 or instrumentality of interstate commerce to  
2 perform the functions of a security-based swap  
3 repository.

4 “(B) INSPECTION AND EXAMINATION.—  
5 Registered security-based swap repositories  
6 shall be subject to inspection and examination  
7 by any representatives of the Commission.

8 “(2) STANDARD SETTING.—

9 “(A) DATA IDENTIFICATION.—The Com-  
10 mission shall prescribe standards that specify  
11 the data elements for each security-based swap  
12 that shall be collected and maintained by each  
13 security-based swap repository.

14 “(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data  
15 collection and data maintenance standards for  
16 security-based swap repositories.

17 “(C) COMPARABILITY.—The standards  
18 prescribed by the Commission under this sub-  
19 section shall be comparable to the data stand-  
20 ards imposed by the Commission on clearing  
21 agencies that clear security-based swaps.

22 “(3) DUTIES.—A security-based swap reposi-  
23 tory shall—  
24

1           “(A) accept data prescribed by the Com-  
2 mission for each security-based swap under this  
3 paragraph (2);

4           “(B) maintain such data in such form and  
5 manner and for such period as may be required  
6 by the Commission;

7           “(C) provide to the Commission, or its des-  
8 ignee, such information as is required by, and  
9 in a form and at a frequency to be determined  
10 by, the Commission, in order to comply with the  
11 public reporting requirements contained in sub-  
12 section (m); and

13           “(D) make available, on a confidential  
14 basis, all data obtained by the security-based  
15 swap repository, including individual  
16 counterparty trade and position data, to the  
17 Commission, the appropriate Federal banking  
18 agencies, the Commodity Futures Trading  
19 Commission, [the Financial Services Oversight  
20 Council], and the Department of Justice or to  
21 other persons the Commission deems appro-  
22 priate, including foreign financial supervisors  
23 (including foreign futures authorities), foreign  
24 central banks, and foreign ministries.

1           “(4) RULES.—Not later than 180 days after  
2           the effective date of the Over-the-Counter Deriva-  
3           tives Markets Act of 2009, the Commission shall  
4           adopt rules governing persons that are registered  
5           under this section, including rules that specify the  
6           data elements that shall be collected and maintained.

7           “(5) EXEMPTIONS.—The Commission may ex-  
8           empt, conditionally or unconditionally, a security-  
9           based swap repository from the requirements of this  
10          section if the Commission finds that such security-  
11          based swap repository is subject to comparable, com-  
12          prehensive supervision or regulation on a consoli-  
13          dated basis by the Commodity Futures Trading  
14          Commission, a Prudential Regulator or the appro-  
15          priate governmental authorities in the organization’s  
16          home country.”.

17 **SEC. 204. REPORTING AND RECORDKEEPING.**

18          (a) The Securities Exchange Act of 1934 (15 U.S.C.  
19          78a, et seq.) is amended by inserting after section 13 the  
20          following section:

21 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**  
22 **TAIN SECURITY-BASED SWAPS.**

23          “(a) IN GENERAL.—Any person who enters into a se-  
24          curity-based swap and—

1           “(1) did not clear the security-based swap in  
2           accordance with section 3A; and

3           “(2) did not have data regarding the security-  
4           based swap accepted by a security-based swap repos-  
5           itory in accordance with rules adopted by the Com-  
6           mission under section 13(n),

7           shall meet the requirements in subsection (b).

8           “(b) REPORTS.—Any person described in subsection  
9           (a) shall—

10           “(1) make such reports in such form and man-  
11           ner and for such period as the Commission shall pre-  
12           scribe by rule or regulation regarding the security-  
13           based swaps held by the person; and

14           “(2) keep books and records pertaining to the  
15           security-based swaps held by the person in such  
16           form and manner and for such period as may be re-  
17           quired by the Commission, which books and records  
18           shall be open to inspection by any representative of  
19           the Commission, an appropriate Federal banking  
20           agency, the Commodity Futures Trading Commis-  
21           sion, the **【Financial Services Oversight Council】**,  
22           and the Department of Justice.

23           “(c) IDENTICAL DATA.—In adopting rules under this  
24           section, the Commission shall require persons described in  
25           subsection (a) to report the same or more comprehensive

1 data than the Commission requires security-based swap  
2 repositories to collect under subsection (n).”.

3 (b) BENEFICIAL OWNERSHIP REPORTING.—

4 (1) Section 13(d)(1) of the Securities Exchange  
5 Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by  
6 inserting “or otherwise becomes or is deemed to be-  
7 come a beneficial owner of any of the foregoing upon  
8 the purchase or sale of a security-based swap or  
9 other derivative instrument that the Commission  
10 may define by rule, and” after “Alaska Native  
11 Claims Settlement Act,”; and

12 (2) Section 13(g)(1) of the Securities Exchange  
13 Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by  
14 inserting “or otherwise becomes or is deemed to be-  
15 come a beneficial owner of any security of a class de-  
16 scribed in subsection (d)(1) upon the purchase or  
17 sale of a security-based swap or other derivative in-  
18 strument that the Commission may define by rule”  
19 after “subsection (d)(1) of this section”.

20 (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-  
21 AGERS.—Section 13(f)(1) of the Securities Exchange Act  
22 of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting  
23 “or otherwise becomes or is deemed to become a beneficial  
24 owner of any security of a class described in subsection  
25 (d)(1) upon the purchase or sale of a security-based swap

1 or other derivative instrument that the Commission may  
2 define by rule,” after “subsection (d)(1) of this section”.

3 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—  
4 Section 15(b)(4) of the Securities Exchange Act of 1934  
5 (15 U.S.C. 78o(b)(4)) is amended—

6 (1) in subparagraph (C), by adding “security-  
7 based swap dealer, major security-based swap partic-  
8 ipant,” after “government securities dealer,”; and

9 (2) in subparagraph (F), by adding “, or secu-  
10 rity-based swap dealer, or a major security-based  
11 swap participant” after “or dealer”.

12 (e) TRANSACTIONS BY CORPORATE INSIDERS.—Sec-  
13 tion 16(f) of the Securities Exchange Act of 1934 (15  
14 U.S.C. 78p) is amended by inserting “or security-based  
15 swaps” after “security futures products”.

16 **SEC. 205. STATE GAMING AND BUCKET SHOP LAWS.**

17 Section 28(a) of the Securities Exchange Act of 1934  
18 (15 U.S.C. 78bb(a)) is amended to read as follows:

19 “(a) Except as provided in subsection (f), the rights  
20 and remedies provided by this title shall be in addition  
21 to any and all other rights and remedies that may exist  
22 at law or in equity; but no person permitted to maintain  
23 a suit for damages under the provisions of this title shall  
24 recover, through satisfaction of judgment in one or more  
25 actions, a total amount in excess of his actual damages

1 on account of the act complained of. Except as otherwise  
2 specifically provided in this title, nothing in this title shall  
3 affect the jurisdiction of the securities commission (or any  
4 agency or officer performing like functions) of any State  
5 over any security or any person insofar as it does not con-  
6 flict with the provisions of this title or the rules and regu-  
7 lations thereunder. No State law which prohibits or regu-  
8 lates the making or promoting of wagering or gaming con-  
9 tracts, or the operation of 'bucket shops' or other similar  
10 or related activities, shall invalidate (1) any put, call,  
11 straddle, option, privilege, or other security subject to this  
12 title (except a security-based swap agreement and any se-  
13 curity that has a pari-mutuel payout or otherwise is deter-  
14 mined by the Commission, acting by rule, regulation, or  
15 order, to be appropriately subject to such laws), or apply  
16 to any activity which is incidental or related to the offer,  
17 purchase, sale, exercise, settlement, or closeout of any  
18 such security, (2) any security-based swap between eligible  
19 contract participants, or (3) any security-based swap ef-  
20 fected on a national securities exchange registered pursu-  
21 ant to section 6(b). No provision of State law regarding  
22 the offer, sale, or distribution of securities shall apply to  
23 any transaction in a security-based swap or a security fu-  
24 tures product, except that this sentence shall not be con-



1 strued as limiting any State antifraud law of general ap-  
2 plicability.”.

3 **SEC. 206. AMENDMENTS TO THE SECURITIES ACT OF 1933;**

4 **TREATMENT OF SECURITY-BASED SWAPS.**

5 (a) DEFINITIONS.—Section 2(a) of the Securities Act  
6 of 1933 (15 U.S.C. 77b(a)) is amended—

7 (1) in paragraph (1), by inserting “security-  
8 based swap,” after “security future,”;

9 (2) in paragraph (3) by adding at the end the  
10 following: “Any offer or sale of a security-based  
11 swap by or on behalf of the issuer of the securities  
12 upon which such security-based swap is based or is  
13 referenced, an affiliate of the issuer, or an under-  
14 writer, shall constitute a contract for sale of, sale of,  
15 offer for sale, or offer to sell such securities.”; and

16 (3) by adding at the end the following:

17 “(17) The terms ‘swap’ and ‘security-based  
18 swap’ have the same meanings as provided in sec-  
19 tions 1a(35) of the Commodity Exchange Act (7  
20 U.S.C. 1a(35)) and section 3(a)(68) of the Securi-  
21 ties Exchange Act of 1934.

22 “(18) The terms ‘purchase’ or ‘sale’ of a secu-  
23 rity-based swap shall be deemed to mean the execu-  
24 tion, termination (prior to its scheduled maturity  
25 date), assignment, exchange, or similar transfer or

1 conveyance of, or extinguishing of rights or obliga-  
2 tions under, a security-based swap, as the context  
3 may require.”.

4 (b) REGISTRATION OF SECURITY-BASED SWAPS.—  
5 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)  
6 is amended by adding at the end the following:

7 “(d) Notwithstanding the provisions of section 3 or  
8 section 4, unless a registration statement meeting the re-  
9 quirements of subsection (a) of section 10 is in effect as  
10 to a security-based swap, it shall be unlawful for any per-  
11 son, directly or indirectly, to make use of any means or  
12 instruments of transportation or communication in inter-  
13 state commerce or of the mails to offer to sell, offer to  
14 buy or purchase or sell a security-based swap to any per-  
15 son who is not an eligible contract participant as defined  
16 in section 1a(13) of the Commodity Exchange Act (7  
17 U.S.C. 1a(13)).”.

18 **SEC. 207. OTHER AUTHORITY.**

19 Unless otherwise provided by its terms, this title does  
20 not divest any appropriate Federal banking agency, the  
21 Commission, the Commodity Futures Trading Commis-  
22 sion, or other Federal or State agency, of any authority  
23 derived from any other applicable law.

1 **SEC. 208. JURISDICTION.**

2 Section 36 of the Securities Exchange Act of 1934  
3 (15 U.S.C. 78mm) is amended by adding at the end the  
4 following new subsection:

5 “(c) DERIVATIVES.—The Commission shall not grant  
6 exemptions from the security-based swap provisions of the  
7 Over-the-Counter Derivatives Markets Act of 2009, except  
8 as expressly authorized under the provisions of that Act.”.

9 **SEC. 209. EFFECTIVE DATE.**

10 This title is effective 180 days after the date of enact-  
11 ment.

12 **TITLE III—IMPROVED FINAN-**  
13 **CIAL AND COMMODITY MAR-**  
14 **KETS OVERSIGHT AND AC-**  
15 **COUNTABILITY**

16 **SEC. 301. ELEVATION OF CERTAIN INSPECTORS GENERAL**  
17 **TO APPOINTMENT PURSUANT TO SECTION 3**  
18 **OF THE INSPECTOR GENERAL ACT OF 1978.**

19 (a) INCLUSION IN CERTAIN DEFINITIONS.—Section  
20 12 of the Inspector General Act of 1978 (5 U.S.C. App.)  
21 is amended—

22 (1) in paragraph (1), by striking “or the Fed-  
23 eral Cochairpersons of the Commissions established  
24 under section 15301 of title 40, United States  
25 Code;” and inserting “the Federal Cochairpersons of  
26 the Commissions established under section 15301 of

1 title 40, United States Code; the Chairman of the  
2 Board of Governors of the Federal Reserve System;  
3 the Chairman of the Commodity Futures Trading  
4 Commission; the Chairman of the National Credit  
5 Union Administration; the Director of the Pension  
6 Benefit Guaranty Corporation; or the Chairman of  
7 the Securities and Exchange Commission;” and

8 (2) in paragraph (2), by striking “or the Com-  
9 missions established under section 15301 of title 40,  
10 United States Code,” and inserting “the Commis-  
11 sions established under section 15301 of title 40,  
12 United States Code, the Board of Governors of the  
13 Federal Reserve System, the Commodity Futures  
14 Trading Commission, the National Credit Union Ad-  
15 ministration, the Pension Benefit Guaranty Corpora-  
16 tion, or the Securities and Exchange Commission,”.

17 (b) EXCLUSION FROM DEFINITION OF DESIGNATED  
18 FEDERAL ENTITY.—Section 8G(a)(2) of the Inspector  
19 General Act of 1978 (5 U.S.C. App.) is amended—

20 (1) by striking “the Board of Governors of the  
21 Federal Reserve System,”;

22 (2) by striking “the Commodity Futures Trad-  
23 ing Commission,”;

24 (3) by striking “the National Credit Union Ad-  
25 ministration,”; and

1           (4) by striking “the Pension Benefit Guaranty  
2       Corporation, the Securities and Exchange Commis-  
3       sion,”.

4   **SEC. 302. CONTINUATION OF PROVISIONS RELATING TO**  
5                   **PERSONNEL.**

6       (a) IN GENERAL.—The Inspector General Act of  
7   1978 (5 U.S.C. App.) is amended by inserting after sec-  
8   tion 8L the following:

9   **“SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ES-**  
10                   **TABLISHMENTS.**

11       “(a) DEFINITION.—For purposes of this section, the  
12   term ‘covered establishment’ means the Board of Gov-  
13   ernors of the Federal Reserve System, the Commodity Fu-  
14   tures Trading Commission, the National Credit Union Ad-  
15   ministration, the Pension Benefit Guaranty Corporation,  
16   and the Securities and Exchange Commission.

17       “(b) PROVISIONS RELATING TO ALL COVERED ES-  
18   TABLISHMENTS.—

19           “(1) PROVISIONS RELATING TO INSPECTORS  
20   GENERAL.—In the case of the Inspector General of  
21   a covered establishment, subsections (b) and (c) of  
22   section 4 of the Inspector General Reform Act of  
23   2008 (Public Law 110–409) shall apply in the same  
24   manner as if such covered establishment were a des-  
25   ignated Federal entity under section 8G. An Inspec-

1       tor General who is subject to the preceding sentence  
2       shall not be subject to section 3(e).

3               “(2) PROVISIONS RELATING TO OTHER PER-  
4       SONNEL.—Notwithstanding paragraphs (7) and (8)  
5       of section 6(a), the Inspector General of a covered  
6       establishment may select, appoint, and employ such  
7       officers and employees as may be necessary for car-  
8       rying out the functions, powers, and duties of the  
9       Office of Inspector General of such establishment  
10      and to obtain the temporary or intermittent services  
11      of experts or consultants or an organization of ex-  
12      perts or consultants, subject to the applicable laws  
13      and regulations that govern such selections, appoint-  
14      ments, and employment, and the obtaining of such  
15      services, within such establishment.

16             “(c) PROVISION RELATING TO THE BOARD OF GOV-  
17      ERNORS OF THE FEDERAL RESERVE SYSTEM.—The pro-  
18      visions of subsection (a) of section 8D (other than the pro-  
19      visions of subparagraphs (A), (B), (C), and (E) of para-  
20      graph (1) of such subsection (a)) shall apply to the Inspec-  
21      tor General of the Board of Governors of the Federal Re-  
22      serve System and the Chairman of the Board of Governors  
23      of the Federal Reserve System in the same manner as  
24      such provisions apply to the Inspector General of the De-

1 partment of the Treasury and the Secretary of the Treas-  
2 ury, respectively.”.

3 (b) CONFORMING AMENDMENT.—Paragraph (3) of  
4 section 8G(g) of the Inspector General Act of 1978 (5  
5 U.S.C. App.) is repealed.

6 **SEC. 303. SUBPOENA AUTHORITY OF CERTAIN INSPECTORS**

7 **GENERAL.**

8 The Inspector General of the Board of Governors of  
9 the Federal Reserve System, the Commodity Futures  
10 Trading Commission, the National Credit Union Adminis-  
11 tration, the Pension Benefit Guaranty Corporation, or the  
12 Securities and Exchange Commission, in carrying out the  
13 provisions of the Inspector General Act of 1978 (5 U.S.C.  
14 App.), is authorized to require by subpoena, from any offi-  
15 cer or employee of a contractor or grantee of the establish-  
16 ment, any officer or employee of a subcontractor or sub-  
17 grantee of such a contractor or grantee, or any person  
18 or entity regulated by the establishment, any records and  
19 testimony necessary in the performance of functions as-  
20 signed to the Inspector General under such Act. Any such  
21 subpoena, in the case of contumacy or refusal to obey,  
22 shall be enforceable by order of any appropriate United  
23 States district court.

1   **SEC. 304. CORRECTIVE RESPONSES BY HEADS OF CERTAIN**  
2                   **ESTABLISHMENTS TO DEFICIENCIES IDENTI-**  
3                   **FIED BY INSPECTORS GENERAL.**

4           The Chairman of the Board of Governors of the Fed-  
5   eral Reserve System, the Chairman of the Commodity Fu-  
6   tures Trading Commission, the Chairman of the National  
7   Credit Union Administration, the Director of the Pension  
8   Benefit Guaranty Corporation, and the Chairman of the  
9   Securities and Exchange Commission shall each—

10           (1) take action to address deficiencies identified  
11           by a report or investigation of the Inspector General  
12           of the establishment concerned; or

13           (2) certify to both Houses of Congress that no  
14           action is necessary or appropriate in connection with  
15           a deficiency described in paragraph (1).

16   **SEC. 305. EFFECTIVE DATE; TRANSITION RULE.**

17           (a) **EFFECTIVE DATE.**—This title and the amend-  
18   ments made by this title shall take effect 30 days after  
19   the date of the enactment of this title.

20           (b) **TRANSITION RULE.**—An individual serving as In-  
21   specter General of the Board of Governors of the Federal  
22   Reserve System, the Commodity Futures Trading Com-  
23   mission, the National Credit Union Administration, the  
24   Pension Benefit Guaranty Corporation, or the Securities  
25   and Exchange Commission on the effective date of this



1 title pursuant to an appointment made under section 8G  
2 of the Inspector General Act of 1978 (5 U.S.C. App.)—

3 (1) may continue so serving until the President  
4 makes an appointment under section 3(a) of such  
5 Act with respect to the Board of Governors of the  
6 Federal Reserve System, the Commodity Futures  
7 Trading Commission, the National Credit Union Ad-  
8 ministration, the Pension Benefit Guaranty Corpora-  
9 tion, or the Securities and Exchange Commission, as  
10 the case may be, consistent with the amendments  
11 made by section 301; and

12 (2) shall, while serving under paragraph (1), re-  
13 main subject to the provisions of section 8G of such  
14 Act which, immediately before the effective date of  
15 this title, applied with respect to the Inspector Gen-  
16 eral of the Board of Governors of the Federal Re-  
17 serve System, the Commodity Futures Trading Com-  
18 mission, the National Credit Union Administration,  
19 the Pension Benefit Guaranty Corporation, or the  
20 Securities and Exchange Commission, as the case  
21 may be, and suffer no reduction in pay.